D-1

ARIZONA STATE RETIREMENT SYSTEM (R-17-0401)
Title 2, Chapter 8, State Retirement Board

New Article: Article 2

New Section: R2-8-201; R2-8-202; R2-8-203; R2-8-204; R2-8-205; R2-8-206; R2-8-207

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: D-1**

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

FROM: Daniel P. Schwiebert, Legal Intern

DATE: April 18, 2017

SUBJECT: **ARIZONA STATE RETIREMENT SYSTEM (R-17-0401)**
Title 2, Chapter 8, State Retirement System Board

New Article: Article 2
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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Preliminary Summary

This Notice of Final Rulemaking from the Arizona State Retirement System ("ASRS") adds one article, containing seven rules, to A.A.C. Title 2, Chapter 8, related to administering health insurance premium benefits to qualified retired state employees.

R2-8-201 establishes definitions, R2-8-202 prescribes eligibility requirements, R2-8-203, 204, and 205, respectively, provide rules for payment, determining benefit amount, and documentation. R2-8-206 establishes a six-month reimbursement program, and R2-8-206 promulgates rules for electing an optional premium benefit.

Proposed Action

The ASRS indicates this rulemaking is necessary to clarify A.R.S. §§ 38-782 and 783; specifically, to clarify for the regulated community the eligibility requirements and calculation methods the ASRS uses to administer Section 782 and Section 783. The ASRS also indicates that the rules clarify the Optional Health Insurance Premium Benefit, and prescribe how retirees can elect that benefit prior to retirement. The rules are intended to give retired state employees and their survivors notice of the impact retirement will have on their cost of health insurance. The following is a non-exhaustive summary of the Board's actions:

- R2-8-201: Establishes definitions for the Article, which are in addition to those established, under Chapter 8, Article 1, R2-8-104, which apply to the entire Chapter 8, including these rules.
- R2-8-202: Establishes conditions for eligibility, including employment with the state for at least five years and continued enrollment in a health insurance plan.
- R2-8-203: Establishes conditions, method, and timing of payments of premiums and premium benefits.
- R2-8-204: Distinguishes between Single and Family benefit amount calculations, and provides the calculation factors considered for each determining each amount.
- R2-8-205: Requires the employer of a state employee to keep records and disclose to the ASRS health insurance information for the employee, and provides the items of information required for disclosure. This requirement keeps the ASRS informed of changes in insurance provider and premium amounts.
- R2-8-206: Describes a system where the retired state employee receives health care cost reimbursements in six month intervals, based on the retired state employee's eligibility and submission of required information.
- R2-8-207: Establishes the conditions and requirements for electing the Optional Premium Benefit, including that the state employee must make the election prior to retiring.

Exemption or Request and Approval for Exception from the Moratorium

The ASRS received an exception from the moratorium on April 6, 2016.

Substantive or Procedural Concerns

None.

ANALYSIS OF THE FINAL RULEMAKING PURSUANT TO THE CRITERIA IN A.R.S. § 41-1052 AND R1-6-201:

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 ASRS cites to A.R.S. § 38-714(E)(4) as general authority for the rules, which states the ASRS may "[a]dopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter." The ASRS also cites to A.R.S. § 38-782 and § 38-783, which place administration of group health insurance plans and state retirement benefits for health insurance premiums under the purview of the ASRS.

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 ASRS indicates that it received no public comments regarding the rulemaking, and that no one attended the oral proceeding on January 24, 2017.

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

No. The ASRS indicates some changes were made between the proposed and final rules. ASRS indicates it made formatting, stylistic, and organizational changes to enhance clarity and consistency within the rules.

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

No. The ASRS indicates that no study was reviewed.

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 ASRS indicates there are no federal laws applicable to 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?

No. The ASRS indicates the rules do not require a permit.

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

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: D-1**

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

FROM: GRRC Economic Team

DATE: April 18, 2017

SUBJECT: **ARIZONA STATE RETIREMENT SYSTEM (R-17-0401)**
Title 2, Chapter 8, State Retirement System Board

New Article: Article 2
New Section: R2-8-201; R2-8-202; R2-8-203; R2-8-204; R2-8-205; R2-8-206; R2-8-207

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 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 Retirement System (ASRS) is proposing to add a new article with seven sections to clarify the language used to outline the administration of the Health Insurance Premium Benefit program. The ASRS will add the rule to help clarify the health insurance premium benefit and the optional health insurance premium benefit. This rulemaking will clarify how the ASRS remits the health insurance premium benefit, including the six-month reimbursement program.

Over the past three years, approximately 850 retirees elected the optional health insurance premium benefit at retirement. In 2016. approximately 134 survivors received the optional health insurance premium benefit that was elected by the member at the member's retirement. Currently, approximately 280 employers provide health insurance to their retired employees. In each fiscal year, approximately 77,409 retirees receive a health insurance premium benefit.

The ASRS has certified that the Joint Legislative Budget Committee has not been notified because the number of new full-time employees necessary to implement and enforce the rule is zero. Notice of new FTEs is required by A.R.S. § 41-1055(B)(3)(a).

1. **Costs and Benefits for:**

a. The implementing agency:

The ASRS incurred the cost of completing this rulemaking and will incur the minimal cost of implementing it.

b. Political subdivisions:

This rulemaking does not provide any benefits or impose any costs on political subdivisions.

c. Businesses:

No businesses are directly affected by the rulemaking.

d. Small businesses:

No businesses are directly affected by the rulemaking.

e. Consumers directly affected by the rulemaking:

All ASRS retired members, beneficiaries, and employers are directly affected by this rulemaking because it will clarify how the Health Insurance Premium Benefit is administered.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided, the ASRS indicates that the benefit from the proposed amendments outweigh the costs. The proposed rule will have minimal economic impact, if any, because it merely clarifies the administration processes for the health insurance premium benefit without imposing any additional requirements on the public.

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

An analysis was not submitted because the ASRS estimated that there will be no economic impact to small businesses.

4. The probable effect on state revenues:

The proposed rulemaking will have no effect on state revenues.

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

The ASRS believes this is the least costly and least intrusive method because it will clarify the Health Insurance Premium Benefit program without imposing additional requirements on the public.

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

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

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

The ASRS indicates that no outside data or studies were used in the development of the proposed rule amendment.

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 RETIREMENT SYSTEM

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Paul Matson
Director

April 18, 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 2. Administration
Chapter 8. State Retirement System Board

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:

1. Close of record date: The rulemaking record was closed on January 24, 2017 following a period for public comment and an oral proceeding.

2. Relation of the rulemaking to a five-year-review report: This rulemaking does not relate to a Five-year Review Report.

3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.

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

5. Certification regarding studies: I certify that the Board did not rely on any studies for this rulemaking.

6. 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 the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.

7. List of documents enclosed:
    a. Cover letter signed by the Board's Assistant Director;
    b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
    c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,

Patrick M. Klein
Assistant Director

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

PREAMBLE

1. Articles, Parts, and Sections Affected	**Rulemaking Action**
Article 2	New Article
R2-8-201	New Section
R2-8-202	New Section
R2-8-203	New Section
R2-8-204	New Section
R2-8-205	New Section
R2-8-206	New Section
R2-8-207	New Section

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

Authorizing statute: A.R.S. § 38-714(E)(4)

Implementing statutes: A.R.S. §§ 38-766, 38-782, and 38-783

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. 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. 822

Notice of Proposed Rulemaking: 22 A.A.R. 3469, December 16, 2016

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

Name:	Jessica A.R. Thomas, Rules Writer
Address:	Arizona State Retirement System 3300 N. Central Ave., Ste. 1400 Phoenix, AZ 85012-0250
Telephone:	(602) 240-2039
E-Mail:	JessicaT@azasrs.gov

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

The ASRS needs to adopt seven rules to clarify various aspects of the health insurance Premium Benefit, including the following:

- Definitions relating to the health insurance Premium Benefit;
- Eligibility for the health insurance Premium Benefit;
- Calculation and supporting documentation for the health insurance Premium Benefit;
- Payment of the health insurance Premium Benefit;
- The Six-Month Reimbursement Program for the health insurance Premium Benefit; and
- The optional health insurance Premium Benefit

In addition to other processes, the ASRS needs to clarify in rule who is eligible for the health insurance Premium Benefit and how the benefit is calculated in specific situations. This rulemaking will clarify how the ASRS remits the health insurance Premium Benefit, including the Six-Month Reimbursement Program. Also, this rulemaking will explain the optional health insurance Premium Benefit, including how a retiree may elect the optional health insurance Premium Benefit and name a beneficiary for that election. These new rules will ensure that members and their survivors are aware of how their costs for health insurance may be affected upon retirement based on the health insurance Premium Benefit and optional health insurance Premium Benefit; the rules will reflect the types and amounts

of health insurance Premium Benefits that the ASRS will pay on behalf of a retired member who meets certain criteria.

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

   No study was reviewed.

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

   Not applicable.

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

   There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to provide the documentation necessary for the ASRS to administer the Health Insurance Premium Benefit program. However, identifying what documentation must be submitted and when it must be submitted to the ASRS will clarify the requirements of the Health Insurance Premium Benefit program, thereby reducing the regulatory burden imposed on the public. Such clarification will ensure that ASRS retirees and Employers have notice about how to participate in the program. Thus, the economic impact is minimized.

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

    - The ASRS made the following formatting and grammatical changes:
      - Capitalized defined terms throughout the rule language.
      - Changed “becomes” to “became” in R2-8-202(E).
      - Changed “select” to “elect” in R2-8-207(D)(9)(b).

    - In order to be clear, the ASRS made the following changes:
      - Added definitions for:

    - Single Calculation;
    - Family Calculation;
    - Contingent Annuitant
    - Joint & Survivor; and
    - Period-Certain;
- Corrected the citation in R2-8-203(E) to reflect R2-8-206.
- Referenced Coverage and removed “covered” in R2-8-204(B).
- Reworded R2-8-207(E) to reflect active voice.
- Changed “continues to be enrolled” to “is enrolled” in R2-8-207(E)(2).
- In order to be clear, the ASRS reworded R2-8-207(H) to reflect that the contingent annuitant must be eligible to receive the Optional Premium Benefit at the member’s death.
- Changed the reference in R2-8-207(F) to reflect subsection (E) instead of (D).
- Changed the reference in R2-8-207(G) to reflect subsection (F) instead of (E).
- Removed “dependent” from R2-8-204.
- Added “to be effective on the date of the retired member’s retirement” to R2-8-207(A).
- Changed R2-8-207(E)(2) to read “the contingent annuitant is enrolled in a Coverage plan at the time of the member’s death or the contingent annuitant enrolls in a Coverage plan within six months of the retired member’s death pursuant to A.R.S. § 38-782(A); and.”
- Added a new subsection (E) to R2-8-207 indicating when the Optional Premium Benefit Program Election or Termination form must be submitted and reorganized the rule accordingly.
- Added two new subsections, (E) and (F), to R2-8-203 and reorganized the rule accordingly.
- Reorganized R2-8-203(E) to appear as R2-8-203(A) and then included the language “notwithstanding subsection (A),” to R2-8-203(B), (C), (D), and (E).
- Removed R2-8-207(A)(2).
- Changed “beneficiary” to “contingent annuitant.”

- In order to be consistent, the ASRS made the following changes:
  - Added “or re-electing” to R2-8-207(D)(8) in order to be consistent with R2-8-207(D).
  - Changed R2-8-207(F)(3) to read “the Contingent Annuitant is eligible to receive at least one monthly payment” in order to be consistent with A.R.S. § 38-783.
  - Removed “other than a straight life annuity” from R2-8-207(A)(1) in order to be consistent with A.R.S. § 38-760.
  - Added the language referencing R2-8-202 and removed references to “eligible retired member,” “eligible Disabled member,” and “eligible dependent beneficiary” in R2-8-203(A), (C), (D), (E), (F), and (G) and made similar changes to R2-8-204, R2-8-205, R2-8-206, and R2-8-207 in order to be consistent with R2-8-203(B).
  - Removed R2-8-205(C)(12) and added “dated” to R2-8-205(C)(11) in order to be consistent with R2-8-206(D)(14),
  - Removed R2-8-207(I) in order to be consistent with R2-8-207(A).

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

The ASRS received no written comments regarding the rulemaking. No one attended the oral proceeding on January 24, 2017.

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

None.

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

The rules do not require a permit.

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

There are no federal laws applicable to these rules.

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

No analysis was submitted.

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

No materials are incorporated by reference.

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

Not applicable.

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Section

Article 2. Health Insurance Premium Benefit

R2-8-201. Definitions

R2-8-202. Premium Benefit Eligibility and Determination

R2-8-203. Payment of Premium Benefit

R2-8-204. Premium Benefit Calculation

R2-8-205. Premium Benefit Documentation

R2-8-206. Six-Month Reimbursement Program

R2-8-207. Optional Premium Benefit

ARTICLE 2. HEALTH INSURANCE PREMIUM BENEFIT

Article 2. Health Insurance Premium Benefit

R2-8-201. Definitions

The following definitions apply to this Article unless otherwise specified:

1. "Coverage" means a medical and/or dental insurance plan a retired member, Disabled member, or contingent annuitant obtains through the ASRS or an Employer.
2. "Contingent annuitant" means the same as in A.R.S. § 38-711(8) and the person is eligible for Coverage.
3. "Disabled" means the member has a disability and is receiving long-term disability benefits pursuant to A.R.S. § 38-797 et seq.
4. "Family calculation" means the family Coverage premium described in A.R.S. § 38-783(B).
5. "Joint & survivor" means the annuity option described in A.R.S. § 38-760(B)(1).
6. "Net premium" means the amount of the Coverage premium reduced by the amount of the Premium Benefit provided by the ASRS.
7. "Original retirement date" means the same as in R2-8-126.
8. "Optional premium benefit" means the election, upon retirement, to have the Premium Benefit paid on behalf of the member's Contingent Annuitant upon death of the member pursuant to A.R.S. § 38-783.
9. "Period-certain" means the annuity option described in A.R.S. § 38-760(B)(2).
10. "Premium benefit" means the amount the ASRS provides on behalf of a retired member or Disabled member in order to offset the Coverage premium of the retired or Disabled member pursuant to A.R.S. § 38-783.

11. "Single calculation" means the single Coverage premium calculation described in A.R.S. § 38-783(A).

12. "Subsidized" means the same as in A.R.S. § 38-783(M)(4).

R2-8-202. Premium Benefit Eligibility and Benefit Determination

A. A retired member or Disabled member who has five or more years of service and who elects to maintain Coverage is eligible for a Premium Benefit as follows:

1. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member only, is eligible for a Single Calculation of the Premium Benefit as described in R2-8-204(A);

2. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is not a retired member or Disabled member is eligible for a Family Calculation of the Premium Benefit as described in R2-8-204(B).

3. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and a dependent who is a retired member or Disabled member is eligible for the greater of:

a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or

b. One Family Calculation of the Premium Benefit described in R2-8-204(B).

4. A retired member or Disabled member who is enrolled as a dependent on an active member's insurance plan is eligible for a Single Calculation of the Premium Benefit described in R2-8-204(A) if:

1. The retired member has an Original Retirement Date prior to August 2, 2012; or

2. The Disabled member became Disabled prior to August 2, 2012;

5. A retired member or Disabled member who elects to maintain Coverage for the retired member or Disabled member and multiple dependents, some of whom are retired members or Disabled members, is eligible for the greater of:

a. Two Single Calculations of the Premium Benefit described in R2-8-204(A); or

b. One Family Calculation of the Premium Benefit described in R2-8-204(B).

B. Pursuant to A.R.S. § 38-783(E), a retired member who returns to work as an active member with an Employer and elects to maintain Coverage is eligible to receive a Premium Benefit if the member has an Original Retirement Date prior to August 2, 2012.

C. Pursuant to A.R.S. § 38-783(E), a Disabled member who elects to maintain Coverage is eligible to receive a Premium Benefit if the Disabled member became Disabled prior to August 2, 2012.

D. A member who receives a lump sum distribution from the ASRS upon retirement is eligible to receive a Premium Benefit pursuant to this Article.

E. Notwithstanding any other section, a retired member who has an Original Retirement Date on or after August 2, 2012, or a Disabled member who became Disabled on or after

August 2, 2012 is eligible to receive a Premium Benefit pursuant to this Article, only if Coverage is not Subsidized.

R2-8-203. Payment of Premium Benefit

A. Every month, the ASRS shall provide a Premium Benefit to the Employer on behalf of a retired member, Disabled member, or Contingent Annuitant who maintains Coverage and is eligible to receive a Premium Benefit pursuant to R2-8-202.

B. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration or the ASRS, the ASRS shall reduce the retired member's pension amount by the amount of the retired member's Net Premium for Coverage pursuant to this Article, unless the Net Premium exceeds the pension amount.

C. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the ASRS and the Net Premium exceeds the retired member's pension amount, the retired member shall be responsible for remitting the Net Premium to the retired member's insurance company and the ASRS shall:

1. Not reduce the retired member's pension amount; and
2. Remit payment of the Premium Benefit to the retired member's insurance company.

D. Notwithstanding subsection (A), if a retired member who is eligible to receive a Premium Benefit pursuant to R2-8-202 elects to maintain Coverage with the Arizona Department of Administration and the Net Premium exceeds the retired member's pension amount,

the retired member shall be responsible for remitting the Net Premium to the Arizona Department of Administration and the ASRS shall:

1. Not reduce the retired member's pension amount; and

2. Remit payment of the Premium Benefit to the Arizona Department of Administration.

E. If a Disabled member who is eligible to receive a Premium benefit pursuant to R2-8-202 maintains Coverage with the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the Arizona Department of Administration, unless the Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.

F. If a Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with the ASRS, the ASRS shall remit the Premium Benefit to the Disabled member's insurance company and the Disabled member shall be responsible for remitting the Net Premium to the Disabled member's insurance company.

G. If a retired member or Disabled member who is eligible to receive a Premium Benefit pursuant to R2-8-202 maintains Coverage with an Employer other than the ASRS or the Arizona Department of Administration, the ASRS shall remit the Premium Benefit to the retired member's or Disabled member's Employer, unless the retired member or Disabled member is participating in the Six-Month Reimbursement Program pursuant to R2-8-206.

H. If a retired member or Disabled member is eligible to receive a Premium Benefit pursuant to R2-8-202, the ASRS shall provide the lesser of the following for any one retired member or Disabled member:

1. The actual cost of the Coverage premium; or

2. The greatest Premium Benefit calculation for which the retired member or Disabled member is eligible pursuant to R2-8-202.

I. If a retired member is eligible to receive a Premium Benefit pursuant to R2-8-202 and the member retires from the ASRS in addition to retiring from another State retirement system or plan described in A.R.S. § 38-921, each month, the ASRS shall remit any Premium Benefit for which the retired member is eligible under this Article to the other State retirement system or plan from which the member retired.

R2-8-204. Premium Benefit Calculation

A. A Single Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or non-Medicare status.

B. A Family Calculation for a Premium Benefit is based on the retired member's or Disabled member's Coverage election, years of service, and Medicare or Non-Medicare status, and the Medicare or Non-Medicare status of any dependents for which the retired member or disabled member has obtained Coverage.

C. A Contingent Annuitant who is eligible to receive an Optional Premium Benefit pursuant to R2-8-207 shall receive an Optional Premium Benefit amount based on:

1. The retired member's years of service and optional retirement benefit election pursuant to A.R.S. § 38-760; and

2. The Contingent Annuitant's Coverage and Medicare or non-Medicare status.

D. Notwithstanding R2-8-203(H), if a Contingent Annuitant is a retired member, the Contingent Annuitant may be entitled to receive more than one Premium Benefit.

R2-8-205. Premium Benefit Documentation

A. Every year, prior to the effective date of Coverage, an Employer shall report to the ASRS all the Coverage plans and premium rates the Employer offers to its retired or Disabled employees.

B. An Employer shall inform the ASRS of any changes to the retired member's, Disabled member's, or Contingent Annuitant's Coverage, including enrollment in Coverage, maintained through the Employer within 30 days of the changes taking effect.

C. Using the Employer's secure ASRS website account, or another ASRS approved method, an Employer shall submit the following health insurance enrollment, change, and/or deletion information pursuant to subsection (B):

1. The retired member's, Disabled member's, or Contingent Annuitant's social security number;
2. The retired member's, Disabled member's, or Contingent Annuitant's full name;
3. The retired member's, Disabled member's, or Contingent Annuitant's residential mailing address and telephone number;
4. The retired member's, Disabled member's, or Contingent Annuitant's date of birth;
5. The Coverage in which the retired member, Disabled member, or Contingent Annuitant is enrolling;
6. The type of change that is being made to the Coverage;
6. The type of deletion that is being made to the Coverage;
7. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

a. First and last name;

b. Social security number;

c. Date of birth; and

d. Medicare number, if applicable.

8. The old and new premium amounts for Coverage;

9. The effective date of the change, deletion, and/or enrollment;

10. The Employer's name and telephone number;

11. A certification by the Employer representative's dated signature that the information is current and correct.

R2-8-206. Six-Month Reimbursement Program

A. For a retired member or Disabled member who is eligible for a Premium Benefit pursuant to R2-8-202(A)(4) or (B), the ASRS shall remit the Premium Benefit to the retired member or Disabled member pursuant to subsection (B).

B. Pursuant to subsection (A), the ASRS shall remit the Premium Benefit to the retired member or Disabled member every six months, payable in July and January. For purposes of this section, the Premium Benefit shall be the aggregate amounts of the Premium Benefit the retired member or Disabled member is entitled to receive during the previous six months.

C. In order to receive a Premium Benefit payment pursuant to subsection (B), a retired member or Disabled member shall submit to the ASRS the Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form after the last day of the last month for which the retired member or Disabled member is seeking reimbursement.

D. The Reimbursement of Medical and/or Dental Cost (Six-Month Reimbursement Program) form that a retired member or Disabled member submits pursuant to subsection (C) shall include the following information:

1. The retired member's or Disabled member's social security number;

2. The retired member's or Disabled member's full name;

3. The retired member's or Disabled member's mailing address and phone number;

4. The retired member's or Disabled member's date of birth;

5. The retired member's or Disabled member's status with the ASRS

6. The retired member's or Disabled member's status with the retired member's or Disabled member's Employer.

7. The following Coverage information for the Coverage policy holder:

   a. First and last names;

   b. Social security number;

   c. Date of birth;

   d. Effective date of Coverage;

8. The following information for each dependent enrolled in, or to be enrolled in, Coverage:

   a. First and last name;

   b. Social security number;

   c. Date of birth;

   d. Effective date of Coverage;

9. Six-month reimbursement totals identified by:

   a. The month and year the premium is due for Coverage;

b. The total medical plan premium per month;

c. The total dental plan premium per month;

d. The employee's out-of-pocket payroll deduction for a medical premium per month;

e. The employee's out-of-pocket payroll deduction for a dental premium per month;

f. The employee's total out-of-pocket payroll deduction for medical and dental premiums per month;

10. The Employer's name;

11. The Employer's phone number;

12. The Employer's email address;

13. The name of the Employer's representative; and

14. The dated signature of the Employer's representative.

R2-8-207. Optional Premium Benefit

A. A member who retires on or after January 1, 2004 is eligible to elect the Optional Premium Benefit to be effective on the date of the retired member's retirement and may designate a Contingent Annuitant to receive the Optional Premium Benefit upon the death of the retired member if:

1. The retired member elects a retirement option under A.R.S. § 38-760; and

2. The retired member elects to maintain Coverage.

B. A retired member who returns to active membership for 60 consecutive months or more before retiring again, may elect or re-elect the Optional Premium Benefit pursuant to subsection (A).

C. A retired member who does not return to active membership for 60 consecutive months or more before retiring again is not eligible to elect the Optional Premium Benefit pursuant to subsection (A) unless the retired member elected the Optional Premium Benefit to be effective on the date of the retired member's Original Retirement Date.

D. In order to elect, re-elect, or terminate the Optional Premium Benefit pursuant to subsection (A), the retired member shall submit to the ASRS the Optional Premium Benefit Program Election or Termination form containing the following information:

1. The retired member's Social Security Number;
2. The retired member's full name and gender;
3. The retired member's current mailing address;
4. The retired member's date of birth;
5. The retired member's email address;
6. The retired member's phone number;
7. Whether the retired member is electing, declining, or terminating the Optional Premium Benefit;
8. The following information for the Contingent Annuitant if the retired member is electing or re-electing the Optional Premium Benefit:
    a. The Social Security Number;
    b. The full name;
    c. The mailing address;

d. The phone number;

e. The date of birth; and

f. The gender and relationship to the retired member; and

9. Certification of understanding by the retired member's dated signature of the following statements:

a. I have a one-time election at the time of retirement for this benefit, and have a retirement date on or after January 1, 2004;

b. I must elect a Joint & Survivor or Period-Certain annuity option;

c. If I elect to participate, my Contingent Annuitant must either be participating or eligible to participate in my retiree health care plan at the time of my death;

d. I must provide a Social Security Number and proof of birth date for my Contingent Annuitant;

e. The Premium Benefit will be actuarially reduced for the remainder of my benefit and my Contingent Annuitant's benefit as long as the Optional Premium Benefit is elected; and

f. I may rescind the election at any time and be eligible for the unreduced Premium Benefit payable as provided by law.

E. In order to elect or re-elect the Optional Premium Benefit, a member shall submit the Optional Premium Benefit Program Election or Termination form to the ASRS prior to the member's retirement date.

F. A Contingent Annuitant the retired member designates to receive the Optional Premium Benefit upon the retired member's death is eligible to receive a Premium Benefit if:

1. The retired member designates the Contingent Annuitant as the primary beneficiary on the member's retirement account;

2. The Contingent Annuitant is enrolled in a Coverage plan at the time of the member's death or the Contingent Annuitant enrolls in a Coverage plan within six months of the retired member's death pursuant to A.R.S. § 38-782(A); and

3. The Contingent Annuitant is eligible to receive at least one monthly payment.

G. Upon the death of a retired member who elected the Optional Premium Benefit pursuant to subsection (A), the ASRS shall provide the Optional Premium Benefit on behalf of the retired member's Contingent Annuitant who is eligible to receive the Optional Premium Benefit pursuant to subsection (F).

H. Notwithstanding subsection (G), the amount of the Optional Premium Benefit the ASRS provides on behalf of a Contingent Annuitant shall not exceed the actual amount of the Coverage premium.

I. Unless otherwise indicated by law, the Optional Premium Benefit shall not terminate upon the death of the retired member if a Contingent Annuitant is eligible for the Optional Premium Benefit pursuant to subsection (F).

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

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

1. Identification of the rulemaking:

The ASRS needs to adopt seven rules to clarify various aspects of the health insurance premium benefit, including the following:

- Definitions relating to the health insurance premium benefit;
- Eligibility for the health insurance premium benefit;
- Calculation and supporting documentation for the health insurance premium benefit;
- Payment of the health insurance premium benefit;
- The 6-Month Reimbursement Program for the health insurance premium benefit; and
- The optional health insurance premium benefit

In addition to other processes, the ASRS needs to clarify in rule who is eligible for the health insurance premium benefit and how the benefit is calculated in specific situations. This rulemaking will clarify how the ASRS remits the health insurance premium benefit, including the 6-Month reimbursement program. Also, this rulemaking will explain the optional health insurance premium benefit, including how a retiree my elect the optional health insurance premium benefit and name a beneficiary for that election. These new rules will ensure that members and their survivors are aware of how their costs for health insurance may be affected upon retirement based on the health insurance premium benefit and optional health insurance premium benefit; the rules will reflect the types and amounts of health insurance premium benefits that the ASRS will pay on behalf of a retired member who meets certain criteria.

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

Currently, approximately 280 Employers provide health insurance to their retired employees. In each fiscal year, approximately 77,409 retirees receive a health insurance premium benefit. Although historically approximately 250 retirees elected the optional health insurance premium benefit each year at retirement, those numbers have increased. Over the past three years, approximately 850 retirees elected the optional health insurance premium benefit at retirement and last year, approximately

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

134 survivors received the optional health insurance premium benefit that was elected by the member at the member's retirement. The ASRS receives approximately 300 per month from members and/or retirees regarding the health insurance premium benefit and optional health insurance premium benefit. The ASRS also receives numerous inquiries from Employers regarding the health insurance premium benefit program. In particular, retirees and Employers are concerned about how and when changes are made to health insurance plans and premiums. The ASRS needs to promulgate rules that clarify how the health insurance premium benefit program is administered. Such clarification will increase the understandability of the health insurance premium benefit and the optional health insurance premium benefit, thereby reducing confusion and the regulatory burden on the public. Ultimately, this will allow the ASRS to administer the health insurance premium benefit program more efficiently.

b. <u>The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:</u>
Currently, retirees and Employers are confused about how the health insurance premium benefit and optional health insurance premium benefit are administered. In particular retirees and Employers do not understand when and how changes are made to health insurance plans and premiums. By promulgating these rules, retirees and Employers will have a better understanding of how and when to update health insurance plan information.

c. <u>The estimated change in frequency of the targeted conduct expected from the rule change:</u>
This rulemaking will clarify how the ASRS administers the health insurance premium benefit program, thereby increasing understandability of the program and increasing the efficiency of the administration. Clarifying how Employers submit health insurance information for retirees and how retirees receive the health insurance premium benefit will ensure that health insurance premium benefit payments are processed more efficiently. As discussed above and below, these rules will increase the clarity and effectiveness of the health insurance premium benefit program, which should result in reducing confusion, as well as any potential administrative delay caused by a misunderstanding of the program and its requirements.

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

There is little to no economic, small business, or consumer impact, other than the minimal cost to the ASRS to prepare the rule package. The rules will have minimal economic impact, if any, because the rulemaking simply clarifies statutory requirements that already exist. There may be some economic impact to provide the documentation necessary for the ASRS to administer the Health Insurance Premium Benefit program. However, identifying what documentation must be submitted and when it must be submitted to the ASRS will clarify the requirements of the Health Insurance Premium Benefit program, thereby reducing the regulatory burden imposed on the public. Such clarification will ensure that ASRS retirees and Employers have notice about how to participate in the program. Thus, the economic impact is minimized.

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:	Jessica A.R. Thomas, Rules Writer
Address:	Arizona State Retirement System 3300 N. Central Ave., Suite 1400 Phoenix, AZ 85012-0250
Telephone:	(602) 240-2039
E-mail:	JessicaT@azasrs.gov

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

In general, all members, as well as their beneficiaries, and Employers of the ASRS will be directly affected by, bear the costs of, and directly benefit from this rulemaking. The ASRS incurred the cost of the rulemaking. The ASRS currently has a total membership of approximately 558,136.

Specifically, retired members, beneficiaries, and Employers that obtain or provide health insurance respectively, will be directly affected by this rulemaking. These rules will clarify how the ASRS administers the Health Insurance Premium Benefit. Such clarification will benefit retired members, beneficiaries, and Employers by increasing the understandability of the Health Insurance Premium Benefit.

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:
   All ASRS retired members, beneficiaries, and Employers are directly affected by this rulemaking because it will clarify how the Health Insurance Premium Benefit is administered. However, the ASRS has determined that no new full-time employees will be required to implement and enforce the rules.

   b. Costs and benefits to political subdivisions directly affected by the rulemaking:
   This rulemaking does not provide any benefits or impose any costs on political subdivisions.

   c. Costs and benefits to businesses directly affected by the rulemaking:
   No businesses are directly affected by the rulemaking.

6. Impact on private and public employment:
   The rulemaking will have no impact on private or public employment.

7. Impact on small businesses[2]:

   a. Identification of the small business subject to the rulemaking:
   No businesses, regardless of size, are subject to the rulemaking.

   b. Administrative and other costs required for compliance with the rulemaking:
   Not applicable.

   c. Description of methods that may be used to reduce the impact on small businesses:
   Not applicable.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:
   All ASRS retired members, beneficiaries, and Employers are directly affected by the rulemaking. The effect has been previously described above.

[2] Small business has the meaning specified in A.R.S. § 41-1001(20).

9. Probable effects on state revenues:

   There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

    The ASRS believes this is the least costly and least intrusive method because it will clarify the Health Insurance Premium Benefit without imposing additional requirements on the public.

38-714. Powers and duties of ASRS and board

A. ASRS shall have the powers and privileges of a corporation, shall have an official seal and shall transact all business in the name "Arizona state retirement system", and in that name may sue and be sued.

B. The board is responsible for supervising the administration of this article by the director of ASRS.

C. The board is responsible for the performance of fiduciary duties and other responsibilities required to preserve and protect the retirement trust fund established by section 38-712.

D. The board shall not advocate for or against legislation providing for benefit modifications, except that the board shall provide technical and administrative information regarding the impact of benefit modification legislation.

E. The board may:

1. Determine the rights, benefits or obligations of any person under this article and afford any person dissatisfied with a determination a hearing on the determination. The board may delegate the duty and authority to act on the board's behalf to a committee of the board for the purposes of this paragraph and title 41, chapter 6, article 10 relating to any decision made under this paragraph by that committee of the board.

2. Determine the amount, manner and time of payment of any benefits under this article.

3. Recommend amendments to this article and articles 2.1 and 7 of this chapter that are required for efficient and effective administration.

4. Adopt, amend or repeal rules for the administration of the plan, this article and articles 2.1 and 7 of this chapter.

F. Beginning June 30, 2016, the board shall determine which of the generally accepted actuarial cost methods shall be used in the annual actuarial valuation of the plan.

G. The board and ASRS are not subject to title 41, chapter 6, except title 41, chapter 6, article 10, for actuarial assumptions and calculations, investment strategy and decisions and accounting methodology.

H. The board shall submit to the governor and legislature for each fiscal year no later than eight months after the close of the fiscal year a report of its operations and the operations of ASRS. The report shall follow generally accepted accounting principles and generally accepted financial reporting standards and shall include:

1. A report on an actuarial valuation of ASRS assets and liabilities.

2. Any other statistical and financial data that may be necessary for the proper understanding of the financial condition of ASRS and the results of board operations.

3. On request of the governor or the legislature, a list of investments owned. This list shall be provided in an electronic format.

4. An estimate of the aggregate fees paid for private equity investments, including management fees and performance fees.

I. The board shall:

1. Prepare and publish a synopsis of the annual report for the information of ASRS members.

2. Contract for a study of the mortality, disability, service and other experiences of the members and employers participating in ASRS. The study shall be conducted for fiscal year 1990-1991 and for at least every fifth fiscal year thereafter. A report of the study shall be completed within eight months after the close of the applicable fiscal year and shall be submitted to the governor and the legislature.

3. Conduct an annual actuarial valuation of ASRS assets and liabilities.

J. The auditor general may make an annual audit of ASRS and transmit the results to the governor and the legislature.

38-782. Group health and accident coverage for retired public employees and elected officials and their dependents; definition

A. The board shall establish group health and accident coverage for eligible retired, surviving and members with a disability and their dependents. The board may establish a self-insurance program for the purposes of this subsection if the board determines that self-insuring would be less expensive than and at least as effective as a fully insured plan, while considering the risks and costs. If the board establishes a self-insurance program, the board shall provide that the self-insurance program include all health coverage benefits that are required pursuant to title 20. ASRS shall establish a separate account for any self-insurance program established pursuant to this section in an amount determined appropriate by ASRS. ASRS shall not use or divert any part of the corpus or income of the account for any purpose other than to administer the self-insurance program unless the board determines that a self-insurance program should no longer be offered. If a self-insurance program is no longer offered, monies in the account shall be transferred to another account of ASRS as determined by ASRS. If an insured retired or member with a disability dies before the insured member's dependent beneficiary or an insured surviving dependent, the dependent beneficiary or insured surviving dependent is entitled to coverage at group rates if the dependent beneficiary or surviving dependent elects to continue in the coverage within six months of the insured member's death and the dependent beneficiary or surviving dependent agrees to pay the cost of the premium for group health and accident insurance. On notification of the insured member's death, the board shall immediately notify a dependent beneficiary or an insured surviving dependent of the provisions of this section.

B. Retired members of the public safety personnel retirement system, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who are receiving benefits from the public safety personnel retirement system, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and who are not covered by section 38-651.01 may participate in group health and accident coverage provided pursuant to this section. On the death of an insured member of the public safety personnel retirement system, the elected officials' retirement plan, the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter, the corrections officer retirement plan or the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628, the insured surviving dependent is entitled to coverage at group rates. Except as

provided in subsection H of this section, the surviving dependent shall be charged amounts that are sufficient to pay for the premium and administrative expense of providing the coverage.

C. The board may enter into agreements with retired, surviving and members with a disability of ASRS and retired members of the elected officials' defined contribution retirement system established pursuant to article 3.1 of this chapter who elect to obtain the coverage provided pursuant to subsection A of this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under retirement benefits and the administrative expense of providing the coverage.

D. The board of trustees of the public safety personnel retirement system may enter into agreements with retired members of the public safety personnel retirement system, the elected officials' retirement plan, the corrections officer retirement plan and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the deduction from the retirement benefits of the members who elect to obtain the coverage of amounts sufficient to pay for the premium not covered under their retirement benefits and the administrative expense of providing the coverage.

E. The board may enter into agreements with retired members of the optional retirement programs authorized pursuant to sections 15-1451 and 15-1628 and their dependents who elect to obtain the coverage provided pursuant to this section. Those agreements may include provisions for the payment of amounts sufficient to pay for the premium and administrative expense of providing the coverage.

F. If an insured member receiving long-term disability benefits pursuant to article 2.1 of this chapter becomes ineligible for the long-term disability benefits, the member and the covered dependents of the member may continue to participate in the group health and accident coverage provided pursuant to this section subject to the following conditions:

1. Participation in the coverage is limited to twelve months from the date the member ceases eligibility for benefits under article 2.1 of this chapter or the member commences employment, whichever occurs first.

2. The member shall pay the full premium cost of the coverage selected, and the member is not eligible for benefits pursuant to section 38-783.

3. If a member who participates in the coverage dies during the twelve month period provided by this subsection, covered dependents of the member may continue coverage after the death of the member through the end of the twelve month period. Covered dependents of the member who continue coverage pursuant to this paragraph shall pay the full premium cost of the coverage selected and are not eligible for benefits pursuant to section 38-783.

G. Retired, surviving or members with a disability who are not eligible for medicare, who live in this state, who enroll in a qualifying health maintenance organization under this section and who reside outside the area of a qualifying health maintenance organization shall be offered the option of enrolling with a qualified health maintenance organization offered through their provider under the same premiums as if they lived within the area boundaries of the qualified health maintenance organization provided that:

1. All medical services are rendered and received at an office designated by the qualifying health maintenance organization or at a facility referred by the health maintenance organization.

2. All nonemergency or nonurgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization are the responsibility of and at the expense of the member.

3. All emergency or urgent travel, ambulatory and other expenses from the residence area of the member to the designated office of the qualifying health maintenance organization or the facility referred by the health maintenance organization shall be paid pursuant to any agreement between the health maintenance organization and the member living outside the area of the qualifying health maintenance organization.

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

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

J. For the purposes of this section, "eligible retired, surviving and member with a disability" means a retired member who is receiving retirement benefits from ASRS, a designated beneficiary of a deceased member who is receiving a survivor benefit pursuant to section 38-762, subsection C as monthly income or a member with a disability who is receiving long-term disability benefits pursuant to section 38-651.03 or article 2.1 of this chapter, and who does not otherwise elect to obtain coverage under a group health and accident insurance plan or program.

38-783. Retired members; dependents; health insurance; premium payment; separate account; definitions

A. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the single coverage premium of any health and accident insurance for each retired member, contingent annuitant or member with a disability of ASRS if the member elects to participate in the coverage provided by ASRS or section 38-651.01 or elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer. A contingent annuitant must be receiving a monthly retirement benefit from ASRS in order to obtain any premium payment provided by this section. The board shall pay:

1. Up to one hundred fifty dollars per month for a member of ASRS who is not eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

2. Up to one hundred dollars per month for each member of ASRS who is eligible for medicare if the retired member or member with a disability has ten or more years of credited service.

B. Subject to subsections G, H and I of this section, the board shall pay from ASRS assets part of the family coverage premium of any health and accident insurance for a retired member, contingent annuitant or member with a disability of ASRS who elects family coverage and who otherwise qualifies for payment pursuant to subsection A of this section. If a member of ASRS and the member's spouse are both either retired or have disabilities under ASRS and apply for family coverage, the member who elects family coverage is entitled to receive the payments under this section as if they were both applying under a single coverage premium unless the payment under this section for family coverage is greater. Payment under this subsection is in the following amounts:

1. Up to two hundred sixty dollars per month if the member of ASRS and one or more dependents are not eligible for medicare.

2. Up to one hundred seventy dollars per month if the member of ASRS and one or more dependents are eligible for medicare.

3. Up to two hundred fifteen dollars per month if either:

(a) The member of ASRS is not eligible for medicare and one or more dependents are eligible for medicare.

(b) The member of ASRS is eligible for medicare and one or more dependents are not eligible for medicare.

C. In addition each retired member, contingent annuitant or member with a disability of ASRS with less than ten years of credited service and a dependent of such a retired member, contingent annuitant or member with a disability who elects to participate in the coverage provided by ASRS or section 38-651.01 or who elects to participate in a health and accident insurance program provided or administered by an employer or paid for, in whole or in part, by an employer to an insurer is entitled to receive a proportion of the full benefit prescribed by subsection A or B of this section according to the following schedule:

1. 9.0 to 9.9 years of credited service, ninety percent.

2. 8.0 to 8.9 years of credited service, eighty percent.

3. 7.0 to 7.9 years of credited service, seventy percent.

4. 6.0 to 6.9 years of credited service, sixty percent.

5. 5.0 to 5.9 years of credited service, fifty percent.

6. Those with less than five years of credited service do not qualify for the benefit.

D. The board shall not pay more than the amount prescribed in this section for a member of ASRS.

E. Notwithstanding subsections A, B and C of this section, for a member who retires on or after August 2, 2012, the board shall not make a payment under this section to a retired member, contingent annuitant or member with a disability who is enrolled in an employer's active employee group health and accident insurance program either as the insured or as a dependent, except that if the retired member, contingent annuitant or member with a disability is enrolled as a dependent and the premium paid to the employer's active employee group health and accident insurance program is not subsidized by the employer, the retired member, contingent annuitant or member with a disability is entitled to receive the amount provided in subsection A of this section.

F. The board shall establish a separate account that consists of the benefits provided by this section. The board shall not use or divert any part of the corpus or income of the account for any purpose other than the provision of benefits under this section unless the liabilities of ASRS to provide the benefits are satisfied. If the liabilities of ASRS to provide the benefits described in this section are satisfied, the board shall return any amount remaining in the account to the employer.

G. Payment of the benefits provided by this section is subject to the following conditions:

1. The payment of the benefits is subordinate to the payment of retirement benefits payable by ASRS.

2. The total of contributions for the benefits and actual contributions for life insurance protection, if any, shall not exceed twenty-five percent of the total actual employer and employee contributions to ASRS, less contributions to fund past service credits, after the day the account is established.

3. The board shall deposit the benefits provided by this section in the account.

4. The contributions by the employer to the account shall be reasonable and ascertainable.

H. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 1 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced to the retiring member for life. The amount of the optional premium benefit payment shall be the actuarial equivalent of the premium benefit payment to which the retired member would otherwise be entitled. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board as follows:

(a) If the retired member names a different contingent annuitant, the optional premium benefit payment shall be adjusted to the actuarial equivalent of the original premium benefit payment based on the age of the new contingent annuitant. The adjustment shall include all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the retired member's date of retirement. Payment of this adjusted premium benefit payment shall continue under the provisions of the optional premium benefit payment previously elected by the retired member. A retired member cannot name a different contingent annuitant if the retired member has at any time rescinded the optional form of health and accident insurance premium benefit payment.

(b) If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an

amount prescribed in subsection A or C of this section times the reduction factor applied to the retired member's premium benefit payment times the joint and survivor option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 1.

I. A member who elects to receive a retirement benefit pursuant to section 38-760, subsection B, paragraph 2 may elect at the time of retirement an optional form of health and accident insurance premium benefit payment pursuant to this subsection as follows:

1. The optional premium benefit payment shall be an amount prescribed by subsection A, B or C of this section that is actuarially reduced with payments for five, ten or fifteen years that are not dependent on the continued lifetime of the retired member but whose payments continue for the retired member's lifetime beyond the five, ten or fifteen year period. The election in a manner prescribed by the board shall name the contingent annuitant and may be revoked at any time before the retiring member's effective date of retirement. At any time after benefits have commenced, the member may name a different contingent annuitant or rescind the election by written notice to the board. If the retired member rescinds the election, the retired member shall thereafter receive the premium benefit payment that the retired member would otherwise be entitled to receive if the retired member had not elected the optional premium benefit payment, including all postretirement increases or decreases in amounts prescribed by subsection A, B or C of this section that are authorized by law after the member's date of retirement. The increased benefit payment shall continue during the remainder of the retired member's lifetime. The decision to rescind shall be irrevocable.

2. If, at the time of the retired member's death:

(a) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection B or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(b) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection A or C of this section and the contingent annuitant is eligible for single health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

(c) The retired member was receiving a reduced premium benefit payment based on an amount prescribed in subsection B or C of this section and the contingent annuitant is not eligible for family health and accident insurance coverage, the contingent annuitant is entitled to receive a premium benefit payment based on an amount prescribed in subsection A or C of this section times the period certain and life option reduction factor elected by the retired member at the time of retirement pursuant to section 38-760, subsection B, paragraph 2.

J. If, at the time of retirement, a retiring member does not elect to receive a reduced premium benefit payment pursuant to subsection H or I of this section, the retired member's contingent annuitant is not eligible at any time for the optional premium benefit payment.

K. If a member who is eligible for benefits pursuant to this section forfeits the member's interest in the account before the termination of ASRS, an amount equal to the amount of the forfeiture shall be applied as soon as possible to reduce employer contributions to fund the benefits provided by this section.

L. A contingent annuitant is not eligible for any premium benefit payment if the contingent annuitant was not enrolled in an eligible health and accident insurance plan at the time of the retired member's death or if the

contingent annuitant is not the dependent beneficiary or insured surviving dependent as provided in section 38-782.

M. For the purposes of this section:

1. "Account" means the separate account established pursuant to subsection F of this section.

2. "Credited service" includes prior service.

3. "Prior service" means service for this state or a political subdivision of this state before membership in the defined contribution program administered by ASRS.

4. "Subsidized" means a portion of the total premium is paid by the employer, but does not necessarily mean a plan in which the employer uses blended rates to determine the total premium.

DEPARTMENT OF TRANSPORTATION (R-17-0501)
Title 17, Chapter 5, Article 4, Dealers

New Section:	R17-5-401
Amend:	R17-5-402; R17-5-405; R17-5-406; R17-5-407; R17-5-408

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: D-2**

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

FROM: Shama Thathi, Staff Attorney

DATE: April 18, 2017

SUBJECT: **DEPARTMENT OF TRANSPORTATION (R-17-0501)**
Title 17, Chapter 5, Article 4, Dealers

New Section: R17-5-401

Amend: R17-5-402; R17-5-405; R17-5-406; R17-5-407; R17-5-408

General Comments

Purpose of the Agency and Summary of What the Rulemaking Does

This rulemaking, from the Arizona Department of Transportation (Department), seeks to create one new rule and amend five rules in A.A.C. Title 17, Chapter 5, Article 4. The rules relate to motor vehicle dealers.

The Department is engaging in this rulemaking to ensure consistency and clarity in the language of the rules, as well as to make any additional changes identified in the five-year-review report approved by the Council on April 5, 2016. The rules were last amended at various times between 2002 and 2006.

Proposed Action

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

- Section 401: The new rule is being added to define terms that are applicable to Article 4.
- Section 402: A.R.S. § 28-4362 establishes a bond of at least $20,000 for an automotive recycler and no more than $100,000 for all other licensed dealers. The rule is being modified to establish a bond amount of $100,000 for a public consignment auction dealer. The amendments also clarify that an applicant must submit a separate, original

bond for each application and for each county in which the applicant has a place of business. Additional clarifying changes are being made.

- Section 405: The rule is being amended to make clarifying changes, as well as update citations.
- Section 406: References to the Motor Vehicle Division are being changed to the Department to conform to other agency rules. Additional clarifying changes are being made and citations are being updated.
- Section 407: Clarifying changes are being made. In addition, under subsection (C), if a motor vehicle is repossessed, odometer certification statement information shall be provided if required by statue.
- Section 408: Clarifying changes are being made.

Exemption or Request and Approval for Exception from the Moratorium

The Department received an exception from the Governor's Office on March 7, 2016.

Substantive or Procedural Concerns

None.

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

Yes. As for general authority, A.R.S. § 28-366 allows the Department to adopt rules pursuant to Title 41, Chapter 6 as the Department deems necessary for: tax and fee collection, public safety, enforcement of law provisions the director administers, and the use of highways and routes to prevent their abuse. In addition, A.R.S. § 28-4303 requires the Department to "supervise and regulate all persons required by this [Chapter 10] to be licensed." The Department also cites applicable specific statutory authority for the rules.

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 notes that it did not receive any written comments and no one attended the oral proceeding on February 7, 2017.

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

No. The final rules do not constitute a substantial change from the proposed rules. The Department made minor technical changes 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?**

No. The Department 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 Department indicates that no federal laws directly relate to the rules.

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

No. The Department notes that the rules do not require a permit or license. However, A.R.S. Title 28, Chapter 10 requires all dealers to be licensed by the Department and each type of dealer license constitutes a general permit, as the activities and practices authorized by each class of licensee are substantially similar in nature for all licensees in each class.

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 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: May 2, 2017 **AGENDA ITEM: D-2**

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

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF TRANSPORTATION (R-17-0501)**
Title 17, Chapter 5, Article 4, Dealers

New Section: R17-5-401

Amend: R17-5-402; R17-5-405; R17-5-406; R17-5-407; R17-5-408

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 Transportation (Department) is proposing to amend the rules in Article 4 to comply with statutes and the Secretary of State's rulemaking requirements. The rules in Article 4 regulate the dealers of motor vehicles.

The key stakeholders are the Department, motor vehicle dealers, and consumers.

On July 31, 2016, the Department licensed 3,824 motor vehicle dealers as follows:

- 770 new vehicle dealers
- 1,702 used vehicle dealers
- 13 public consignment auction dealers
- 26 brokers
- 845 wholesale dealers
- 13 wholesale auction dealers
- 198 manufacturers
- 60 distributors
- 197 automotive recyclers

1. **Costs and Benefits for:**

a. The implementing agency:

The Department does not anticipate that it will incur additional costs aside from the minimal costs associated with the rulemaking.

b. Political subdivisions:

This rulemaking does not directly impact political subdivisions.

c. Businesses:

Motor vehicle dealers will benefit from this improvement of the rules. Rules that align with statute reduce administrative waste for businesses.

d. Small businesses:

Small motor vehicle dealers will benefit in the same manner as large motor vehicle dealers.

e. Consumers directly affected by the rulemaking:

The Department notes that consumers will benefit from this rulemaking due to increased clarity of the rules.

2. **Do the probable benefits outweigh the probable costs?**

The costs imposed by this rulemaking are minimal. The benefits are substantial because rules that are opaque, confusing, and out of compliance with state statute can impose a significant cost on businesses. This rule improvement will reduce the transaction costs for motor vehicle dealers.

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

Statutory requirements oblige all motor vehicle dealers to be licensed. Statute does not provide any exceptions for small motor vehicle dealers, so there is not a feasible avenue to exempt small motor vehicle dealers from these rules through the rulemaking process.

4. **The probable effect on state revenues:**

This rulemaking will not impact state revenues.

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

The Department notes that there are no less intrusive methods of improving these rules.

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

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

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

No empirical or quantitative data was 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.

ADOT
Director's Office

Douglas A. Ducey, Governor
John S. Halikowski, Director
Scott Omer, Deputy Director for Operations
Kevin Biesty, Deputy Director for Policy
Dallas Hammit, Deputy Director for Transportation

March 13, 2017

Ms. Nicole Ong
Governor's Regulatory Review Council
100 N. 15th Ave., Suite 305
Phoenix, AZ 85007

Re: Administrative Rules R17-5-401, R17-5-402, R17-5-405 through R17-5-408 - Department of Transportation - Commercial Programs

Dear Ms. Ong:

The Arizona Department of Transportation (ADOT) submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A):

a. The rulemaking record closed on February 7, 2017 and no comments were received on these rules.
b. The rulemaking activity relates to a five-year review report approved by GRRC on April 5, 2016.
c. The rulemaking does not establish a new fee.
d. The rulemaking does not contain a fee increase.
e. An immediate effective date is not requested for the rules under A.R.S. § 41-1032.
f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of, or justification for the rules.
g. No new full-time employees are necessary to implement and enforce the rules.

Documents enclosed in the final rule package are as follows:

a. Signed cover letter;
b. Notice of Final Rulemaking;
c. Economic, small business, and consumer impact statement;
d. General and specific statutes authorizing the rules and statutory definitions; and
e. Request for an exemption from the rulemaking moratorium and approval of exemption.

Sincerely,

John S. Halikowski
ADOT Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

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

R17-5-401	New Section
R17-5-402	Amend
R17-5-405	Amend
R17-5-406	Amend
R17-5-407	Amend
R17-5-408	Amend

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

Authorizing statutes: A.R.S. §§ 28-366, 28-4303, and 28-4410

Implementing statutes: A.R.S. §§ 28-2058, 28-2060, 28-4301, 28-4410.01, 28-4422

3. The effective date of the rules:

The rules will be effective 60 days after filing with 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. 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 Docket Opening: 22 A.A.R. 1347, May 27, 2016

Notice of Proposed Rulemaking: 23 A.A.R. 16, January 6, 2017

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

Name: Jane McVay

Address: Arizona Department of Transportation
Government Relations and Policy Development
206 S. 17th Ave., Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4279

E-mail: jmcvay@azdot.gov

Web site: http://www.azdot.gov/docs/default-source/libraries/current-rulemaking-activity.pdf?sfvrsn=10

Please visit the ADOT web site to track progress of these rules and any other agency rulemaking matters.

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

ADOT received approval from Rene Guillen at the Governor's Office on March 7, 2016 to make rule changes necessary to update the dealer rules in 17 A.A.C. 5, Article 4. These rule changes are proposed to update the dealer rules to be consistent with current dealer statutes and other agency rules, as recommended in a five-year review report approved by the Governor's Regulatory Review Council (GRRC) on April 5, 2016. The rule changes also make the rules consistent with the rulemaking requirements of the Secretary of State, update rule references, and improve the rule consistency and clarity.

The rules add a new section, R17-5-401, which defines terms for Article 4 that are applicable to the types of dealers licensed by ADOT and dealer and vehicle owner-related terminology used in this Article. A.R.S. § 28-4362 establishes a bond of at least $20,000 for an automotive recycler and no more than $100,000 for all other licensed dealers. The rules establish a bond amount of $100,000 for a public consignment auction dealer. The rules clarify the signature and other requirements for bonds, and add information that is included on the dealer acquisition contract. In addition, the rules change references from the Motor Vehicle Division to the Department to conform to other agency rules. The rules clarify that if a motor vehicle is repossessed, the odometer certification statement information may be provided if required by statute, and make other technical and conforming changes.

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

The agency did not review or rely on any study relevant to the rules.

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

This rulemaking does not diminish a previous grant of authority to political subdivisions in this state.

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

As of July 31, 2016, the Department had a total of 3,824 licensed motor vehicle dealers in nine different license types, totaling 770 new vehicle dealers; 1,702 used vehicle dealers; 13 public consignment auction dealers; 26 brokers; 845 wholesale dealers; 13 wholesale auction dealers; 198 manufacturers; 60 distributors; and 197 automobile recyclers.

A.R.S. § 41-1001 defines a small business as a concern that is independently owned and operated, not dominant in its field, and which employs fewer than 100 full-time employees, or which had gross annual receipts of less than $4,000,000 last fiscal year. Some Arizona businesses that are licensed as a dealer are small businesses while other licensed dealers generate more revenue and employ more than 100 full-time employees.

The rules make technical changes to make the dealer rules consistent with the dealer statutes and other Department rules. The rules do not impose any new fees or costs on dealers and do not increase the regulatory burden on dealers. A.R.S. § 28-4362 prescribes a bond of at least $20,000 for an automotive recycler's license and not more than $100,000 for all other licenses. The Department regarded public consignment auction dealers as used car dealers, which needed to post a $100,000 bond. The current Department rules did not list the bond for public consignment auction dealers, so the rules were amended to state that a public consignment auction dealer must provide a bond of $100,000. A broker, wholesale motor vehicle dealer or motor vehicle wholesale auction dealer pays a bond of $25,000. An automotive recycler pays a bond of $20,000. Due to the fact that the bond amounts for dealers are unchanged, neither the licensed dealers nor consumers will be impacted. The rules do not impose any costs on consumers, the Department, or other state or local agencies.

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

The Department made the following clarifying changes in R17-5-401:

Added a definition of "Director" to read: "Director" has the same meaning as in A.R.S. § 28-101.

Added "or Vehicle Identification Number" in the definition of "VIN".

Modified the definition of "Principal place of business" to refer to a licensed place of business from which a wholesale motor vehicle dealer or a broker conducts business and keeps the business records.

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

The Department held a public hearing on the rules on February 7, 2017, but did not receive any rule comments.

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

None.

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

The rules do not require a permit, however, Title 28, Chapter 10, Arizona Revised Statutes, requires all the types of dealers to be licensed by ADOT to operate in this state. Each type of dealer license is a general permit because the activities and practices authorized by each class of licensee are the same for all licensees in each class.

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

No federal laws are applicable to the rules and the rules are not more stringent than federal law.

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

No analysis was submitted to the Department.

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

The rules do not have any incorporations by reference.

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

The rules were not previously made, amended, or repealed as emergency rules.

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION COMMERCIAL PROGRAMS

ARTICLE 4. DEALERS

Section

R17-5-401. Definitions

R17-5-402. Bond Amounts; ~~Motor Vehicle~~ Dealers, Brokers, and Automotive ~~Recyclers~~ Recyclers' Business Licenses

R17-5-405. ~~Motor Vehicle~~ Dealer Acquisition Contract

R17-5-406. ~~Motor Vehicle~~ Dealer Consignment Contract

R17-5-407. Motor Vehicle Repossession

R17-5-408. Resale of a New Motor Vehicle

ARTICLE 4. DEALERS

R17-5-401. Definitions

In addition to the definitions in A.R.S. §§ 28-4301 and 28-4410, the following definitions apply to this Article unless otherwise specified:

"Dealer" or "motor vehicle dealer" has the same meaning as "motor vehicle dealer" in A.R.S. § 28-4301.

"Director" has the same meaning as in A.R.S. § 28-101.

"Owner" means a person who holds the legal title of a motor vehicle.

"Principal place of business" means a licensed place of business from which a wholesale motor vehicle dealer or a broker conducts business and keeps the records of the business.

"State" means the state of Arizona and all its agencies and political subdivisions, their officers and agents.

"Taxpayer identification number" means a number used for tax purposes that is assigned by the Social Security Administration or the Internal Revenue Service.

"VIN" or "Vehicle Identification Number" means the unique code, including serial number, used by an automobile manufacturer to identify a specific motor vehicle.

R17-5-402. Bond Amounts; ~~Motor Vehicle~~ Dealers, Brokers, and Automotive ~~Recyclers~~ Recyclers' Business Licenses

A. As prescribed under A.R.S. § 28-4362, the ~~Division~~ Department shall require a bond in the amount specified for the following motor vehicle business license applicants:

1. $100,000 ~~from~~ for: ~~a motor vehicle dealer engaged in selling new or used motor vehicles,~~
   a. A new motor vehicle dealer,
   b. A used motor vehicle dealer, or
   c. A public consignment auction dealer.
2. $25,000 ~~from a wholesale motor vehicle dealer,~~ for:
   a. A broker,
   b. A wholesale motor vehicle dealer, or
   c. A wholesale motor vehicle auction dealer.

~~3. $25,000 from a wholesale motor vehicle auction dealer,~~

~~4. $25,000 from a motor vehicle broker, and~~

~~5.~~3.$20,000 ~~from~~ for an automotive recycler.

B. An applicant shall submit a bond ~~in a form~~ on the original vehicle dealer bond form prescribed by the ~~Division~~ Director~~.~~ that meets the requirements in A.R.S. § 28-4362 and these rules. An applicant shall submit a separate, original bond for each application and for each county in which an applicant or licensee has an established place of business or a principle place of business. A power of attorney for the attorney-in-fact shall be attached to the dealer bond, if applicable. ~~The Division shall not accept a handwritten bond.~~

C. An applicant shall sign the dealer bond, in addition to all partners for a partnership, or one officer for an incorporation.

D. The completed bond form shall contain an embossed stamp, seal, or sticker from the bond company.

E. The Department shall not accept a handwritten bond.

R17-5-405. ~~Motor Vehicle~~ Dealer Acquisition Contract

~~**A.** Definitions.~~

~~1. "Contract" or "Dealer acquisition contract" has the meaning prescribed under A.R.S. § 28-4410(G)(2).~~

~~2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed in A.R.S. § 28-4301(23).~~

~~3."Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.~~

~~4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).~~

~~5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.~~

~~6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.~~

~~**B.**~~**A.**~~General Requirements.~~ For the purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a Department form with contents as prescribed under subsection ~~(C)~~ (B).

~~**C.**~~**B.**~~Content.~~ A dealer acquisition contract shall contain the following information:

1. The heading "Dealer Acquisition Contract;"
2. The dealer's name and dealer license number;
3. The dealer's business address and telephone number;
4. The owner's name, address, ~~and~~ telephone number; driver license number or taxpayer identification number, as applicable; and type of ownership;
5. The ~~vehicle identification number~~ VIN; license plate number; licensing state; and model, make, and year of the motor vehicle that has a dealer acquisition contract;
6. If there is a lien holder~~:~~, for each lien holder:
   a. The lien holder's name, address, and telephone number;
   b. ~~Lien~~ The lien balance;
   c. ~~Prepayment~~ The prepayment penalties, if any; and
   d. Other information ~~relevant to~~ on the terms and conditions of the lien repayment~~;~~.
7. A statement by the owner that the motor vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection ~~(C)(6)(a)~~ (B)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection ~~(C)(6)(b)~~ (B)(6)(b);
8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another motor vehicle;
9. A statement indicating that the owner is selling and transferring the described motor vehicle to the dealer;
10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the lien balance and assure that the balance is paid and the lien is released;

11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
15. The date when the dealer acquisition contract is executed by each party;
16. The dealer's signature; and
17. The owner's signature.

~~**D.**~~**C.**A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.

~~**E.**~~**D.**~~Disposition.~~ When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the motor vehicle is sold.

~~**F.**~~**E.**~~Disclaimer.~~ In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. ~~It~~ This Section does not detail any additional contractual requirements that may be defined under other Arizona statutes.

R17-5-406. ~~Motor Vehicle~~ Dealer Consignment Contract

~~**A.**~~ ~~Definitions.~~

1. ~~"Contract" or "Dealer consignment contract" has the meaning prescribed under A.R.S. § 28-4410(G)(1).~~
2. ~~"Dealer" or "Motor vehicle dealer" has the meaning prescribed under A.R.S. § 28-4301(23).~~
3. ~~"Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.~~
4. ~~"Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).~~
5. ~~"Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.~~
6. ~~"State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.~~

~~**B.**~~**A.**~~General Requirements.~~ For the purposes of A.R.S. § 28-4410, a motor vehicle dealer shall prepare a dealer consignment contract on a form with contents as prescribed under subsection ~~(C)~~(B).

~~**C.**~~**B.** ~~Content.~~ A dealer consignment contract shall contain the following information:

1. The heading "Dealer Consignment Contract;"
2. The dealer's name and dealer license number;

3. The dealer's business address and telephone number;
4. The owner's name, address, ~~and~~ telephone number~~;~~, driver license number or taxpayer identification number, and type of ownership;
5. The ~~vehicle identification number~~ VIN; license plate number; licensing state; and model, make, and year~~;~~ of the motor vehicle that has a dealer consignment contract;
6. If there is a lien holder~~:~~, for each lienholder:
   a. The lien holder's name, address, and telephone number;
   b. ~~Lien~~ The lien balance;
   c. ~~Prepayment~~ The prepayment penalties, if any; and
   d. Other information ~~relevant to~~ on the terms and conditions of the lien repayment;
7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection ~~(C)(6)(a)~~ (B)(6)(a) and the lien balance is no greater than that disclosed under subsection ~~(C)(6)(b)~~ (B)(6)(b);
8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
12. The expiration date of the consignment contract;
13. An agreement by the dealer to deliver the motor vehicle to the owner at a specified location on the date that the contract expires or terminates;
14. An agreement by the owner to pay any specified fees due to the motor vehicle dealer ~~upon~~ on the return of the vehicle, after the expiration or termination of the consignment contract;
15. The date the contract is executed;
16. The dealer's signature; and
17. The owner's signature.

~~**D.**~~**C.** A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.

~~**E.**~~**D.** ~~Disposition.~~ When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the dealer consignment contract expires or terminates, or the vehicle is sold.

~~**F.**~~**E.** ~~Disclaimer.~~ In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract. This Section furnishes only information required in a dealer consignment contract. ~~It~~ This Section does not detail any additional contractual requirements that may be defined under other Arizona statutes.

R17-5-407. Motor Vehicle Repossession

A. The ~~Division~~ Department shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:

1. The motor vehicle is physically located in this state;
2. A notice of lien is filed with the ~~Division~~ Department;
3. A completed affidavit from the lienholder is submitted to the ~~Division~~ Department stating that the motor vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
   a. The ~~Vehicle Identification Number (~~VIN~~)~~,
   b. The vehicle model year,
   c. The vehicle make,
   d. The registered owner's name,
   e. The date of repossession,
   f. The state in which the vehicle is titled,
   g. The lienholder company name,
   h. The lienholder agent or representative name,
   i. ~~Lienholder~~ The lienholder signature, and
   j. ~~Notary~~ The notary or ~~Motor Vehicle Division~~ Department agent signature.

B. The ~~Division~~ Department shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3), ~~and (4)~~(A)(4), and subsection (C) if all of the following apply:

1. The affidavit is submitted by an Arizona licensed dealer, and
2. The Arizona licensed dealer is transferring the title into the dealership's name.

C. A lienholder may sell a repossessed motor vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the ~~Division~~ Department. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:

1. The buyer's name;
2. The sale date;
3. ~~Buyer's~~ The buyer's street address, including the city, state, and zip code;
4. ~~Name~~ The name of the new lienholder, if applicable;
5. ~~New~~ The new lien date, if applicable;

6. ~~Odometer~~ The odometer certification statement, if required by A.R.S. § 28-2058, including odometer reading, and an ~~area for~~ acknowledgment with the buyer's name and signature ~~to acknowledge the odometer certification~~;
7. A statement that the buyer is aware of the odometer certification made by the seller;
8. The seller's name;
9. The seller's notarized signature; and
10. The seller's address, including city, state, and zip code~~; and~~.

D. A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.

E. ~~Disclaimer.~~ The ~~Division~~ Department has no responsibility relating to foreclosure on real property under A.R.S Title 33, Chapter 7.

R17-5-408. Resale of a New Motor Vehicle

A. A ~~new~~ motor vehicle dealer~~, as defined in A.R.S. § 28-4301,~~ that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).

B. A motor vehicle dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:

1. The name of the dealership;
2. A vehicle description, including year, make, and ~~vehicle identification number (~~VIN~~)~~;
3. A statement that the new motor vehicle was delivered to a previous purchaser;
4. The printed name of the new purchaser; and
5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.

C. The ~~new~~ motor vehicle dealer shall:

1. Provide a copy of the notice under subsection (B) to the new purchaser, and
2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.

D. The ~~new~~ motor vehicle dealer is not required to submit ~~to the Division~~ the notice to the Department under subsection (B) unless otherwise required by state or federal law.

E. A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter~~,~~ the intent of the provisions specified in subsection (B).

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

ARTICLE 4. DEALERS

R17-5-401, R17-5-402, R17-5-405 to R17-5-408

A. Economic, small business, and consumer impact summary:

1. Identification of the rulemaking:

This rulemaking makes rule changes necessary to update the dealer rules in 17 A.A.C. 5, Article 4, to make the rules consistent with current dealer statutes, other agency rules, and agency practices. The rules make changes recommended in a five-year review report approved in 2016. The rule changes comply with the rulemaking style and form requirements of the Secretary of State.

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

With approval of the rule changes, licensed motor vehicle dealers and consumers are less likely to have a misunderstanding about the rules.

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:

If the rule changes are not adopted, the public and licensed motor vehicle dealers may not be aware of updated dealer rules relating to bonds, dealer acquisition and dealer consignment contracts, vehicle repossession, and dealer actions.

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

Approval of the rule changes will benefit motor vehicle dealers and the public by increasing understanding of the dealer rules, including dealer acquisition and dealer consignment contract requirements.

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

This economic, small business, and consumer impact statement indicates that the rules will impose no additional costs on licensed dealers, including small motor vehicle dealers. Aside from the minimal cost of the rulemaking, the rules will impose no additional costs on the Department of Transportation. The rules will not impact public or private employment. In addition, the rules do not impact revenue received by state or local government.

3. Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: Jane McVay

Address: Arizona Department of Transportation
Government Relations and Policy Development
206 S. 17th Avenue, Mail Drop 140A
Phoenix, AZ 85007

Telephone: (602) 712-4279

E-mail: jmcvay@azdot.gov

B. Economic, small business and consumer impact statement:

1. Identification of the rulemaking:

See paragraph (A)(1) above.

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

Persons to bear costs	**Persons directly benefiting**
Arizona Department of Transportation	Consumers
Motor vehicle dealers	Consumers
Motor vehicle dealers	Motor vehicle dealers

3. Analysis of costs and benefits occurring in this state:

Cost-revenue scale. Annual costs or revenues are defined as follows:

Minimal less than $1,000

Moderate $1,000 to $10,000

Substantial $10,001 or more

a. **Probable costs and benefits to ADOT and other agencies directly affected by the implementation and enforcement of the rulemaking:**

Aside from the minimal cost of rulemaking to the Department, the Department will not incur additional costs as a result of this rulemaking. The rulemaking does not require any new full-time employees to enforce and implement these rules. The rules do not impose costs on other agencies. Consumers and motor vehicle dealers benefit from the rulemaking by having rules that are clear, concise, and understandable.

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

The rules do not impose costs on political subdivisions. Political subdivisions in the state may benefit indirectly from updated dealer rules, dealer licensing requirements, and enforcement of dealer rules.

c. Probable costs and benefits to businesses directly affected by the rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the rulemaking:

The rules do not impose any additional costs on licensed motor vehicle dealers, but licensed motor vehicle dealers benefit from having updated administrative rules. The revenue and payroll expenditure of motor vehicle dealers are not impacted by these rules.

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

The rules do not impact private employment by motor vehicle dealers or other motor vehicle-related businesses. The rules do not impact Department employment because no new employees are needed to enforce and administer the rules. The rules do not impact other public sector employment.

5. Statement of the probable impact of the rulemaking on small businesses:

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

The small businesses subject to these rules, as defined under A.R.S. § 41-1001(21), are small dealerships with fewer than 100 full-time employees or with gross annual receipts of less than $4 million last fiscal year. On July 31, 2016, the Department licensed a total of 3,824 motor vehicle dealers in nine different license categories, as follows: retail dealers, including 770 new vehicle dealers; 1,702 used vehicle dealers; 13 public consignment auction dealers; 845 wholesale dealers; 13 wholesale auction dealers; 198 manufacturers; 60 distributors; and 197 automobile recyclers. Licensed motor vehicle dealers include a mix of high-volume motor vehicle dealerships that fall outside the definition of a small business, and smaller, lower-volume motor vehicle dealerships with a small employment base.

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

These rules do not impose any administrative costs on businesses subject to the rules.

c. Description of the methods that ADOT may use to reduce the impact on small businesses:

These rules apply to all motor vehicle dealers as defined in A.R.S. § 28-4301 that are required by state statute to be licensed. Statute requires new and used motor vehicle dealers, automobile recyclers, wholesale dealers, wholesale auction dealers, brokers, and public consignment auction dealers to be licensed and meet certain requirements unless excepted in statute.

To sell a new motor vehicle, either the manufacturer of a domestic vehicle, the importer of a foreign manufactured vehicle, or the distributor must be licensed. In Arizona, A.R.S. § 28-4301(2) allows a person who is an automotive recycler to casually buy, sell, and dismantle no more than six motor vehicles per year without meeting licensing, bonding, and other dealer requirements. Certain nonprofit organizations with a tax exempt status may sell a donated motor vehicle without being licensed under certain conditions. Statutory exceptions for nonprofit organizations and casual auto sales by an individual allow small businesses to operate without making larger financial commitments as required by statute for licensed dealers. Administrative rules are consistent with statutory requirements and applicable to both small and large dealers. These rule changes do not impose any additional administrative compliance or regulatory costs on small businesses.

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

The rules benefit consumers who are affected by the rulemaking without imposing additional costs on consumers.

6. Statement of the probable effect on state revenues:

The rules do not impact state revenue.

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

   See 5(c)

   ADOT routinely chooses the rulemaking options that are the least costly and burdensome to the business sector. The Department can not select other rulemaking options to ensure that dealer administrative rules are consistent with statutory requirements for dealers.

C. **Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:**

   None

F. The Department shall provide notice and conduct hearings as prescribed under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5, as applicable.

Historical Note

New Section made by exempt rulemaking under Laws 2013, Ch. 129, § 27 at 21 A.A.R. 1096, effective September 1, 2015 (Supp. 15-2).

ARTICLE 4. DEALERS

R17-5-401. Reserved

R17-5-402. Bond Amounts; Motor Vehicle Dealers, Brokers, and Recyclers Business Licenses

A. As prescribed under A.R.S. § 28-4362, the Division shall require a bond in the amount specified for the following motor vehicle business license applicants:
   1. $100,000 from a motor vehicle dealer engaged in selling new or used motor vehicles,
   2. $25,000 from a wholesale motor vehicle dealer,
   3. $25,000 from a wholesale motor vehicle auction dealer,
   4. $25,000 from a motor vehicle broker, and
   5. $20,000 from an automotive recycler.

B. An applicant shall submit a bond in a form prescribed by the Division Director. The Division shall not accept a handwritten bond.

Historical Note

New Section recodified from R17-4-240 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2).

R17-5-403. Expired

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1864, effective August 2, 2003 (Supp. 03-2). Section expired under A.R.S. 1056(J) at 22 A.A.R. 3195, effective October 5, 2016 (Supp. 16-3).§

R17-5-404. Dealer Title Requirement for Vehicle Sale

For purposes of A.R.S. § 28-4409(A), the dealer's name shall be recorded on a title certificate as transferee or purchaser.

Historical Note

New Section recodified from R17-4-241 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section heading corrected as recodified at 7 A.A.R. 3483 (Supp. 09-2).

R17-5-405. Motor Vehicle Dealer Acquisition Contract

A. Definitions.
   1. "Contract" or "Dealer acquisition contract" has the meaning prescribed under A.R.S. § 28-4410(G)(2).
   2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed in A.R.S. § 28-4301(23).
   3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
   4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
   5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
   6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.

B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer acquisition contract on a form with contents as prescribed under subsection (C).

C. Content. A dealer acquisition contract shall contain the following information:
   1. The heading "Dealer Acquisition Contract;"
   2. The dealer's name and dealer license number;
   3. The dealer's business address and telephone number;
   4. The owner's name, address, and telephone number;
   5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
   6. If there is a lien holder:
      a. The lien holder's name, address, telephone number;
      b. Lien balance;
      c. Prepayment penalties, if any; and
      d. Other information relevant to the terms and conditions of the lien repayment;
   7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the unpaid lien balance is no greater than disclosed under subsection (C)(6)(b);
   8. The contracted purchase price and a recital that this amount has been either paid directly to the owner or credited to the owner against the purchase price of another vehicle;
   9. A statement indicating that the owner is selling and transferring the described vehicle to the dealer;
   10. An authorization by the owner permitting the dealer to obtain all information necessary to verify the accuracy of the lien balance and assure that the balance is paid and the lien is released;
   11. A statement by the owner that the registration document provided to the dealer is the original and most recent registration issued for the vehicle;
   12. An agreement indicating whether the owner or dealer is responsible to satisfy the lien balance;
   13. An authorization by the owner permitting the dealer to obtain the original title certificate from the lien holder; endorse the owner's name on the title; and if necessary, transfer the title to the dealer;
   14. A statement that if the owner receives the certificate of title, the owner shall immediately deliver the title to the dealer and provide any signature and acknowledgment necessary to complete the title transfer to the dealer;
   15. The date the contract is executed;
   16. The dealer's signature; and
   17. The owner's signature.

D. A dealer or an owner who adds to a dealer acquisition contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.

E. Disposition. When a dealer prepares a dealer acquisition contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the date the vehicle is sold.

F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer acquisition contract. This Section furnishes only information required in a dealer acquisition contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note

New Section recodified from R17-4-245 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by

final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

R17-5-406. Motor Vehicle Dealer Consignment Contract

A. Definitions.
1. "Contract" or "Dealer consignment contract" has the meaning prescribed under A.R.S. § 28-4410(G)(1).
2. "Dealer" or "Motor vehicle dealer" has the meaning prescribed under A.R.S. § 28-4301(23).
3. "Division" means the "Motor Vehicle Division" of the Arizona Department of Transportation and any authorized agent.
4. "Vehicle" or "motor vehicle" has the meaning prescribed under A.R.S. § 28-4301(22).
5. "Owner" means a person prescribed under A.R.S. § 28-101(36)(a), that has the legal right to sell or dispose of the motor vehicle.
6. "State" means the "state of Arizona" and all its agencies and political subdivisions and their officers and agents.

B. General Requirements. For purposes of A.R.S. § 28-4410, a dealer shall prepare a dealer consignment contract on a form with contents as prescribed under subsection (C).

C. Content. A dealer consignment contract shall contain the following information:
1. The heading "Dealer Consignment Contract;"
2. The dealer's name and dealer license number;
3. The dealer's business address and telephone number;
4. The owner's name, address, and telephone number;
5. The vehicle identification number; license plate number; licensing state; and model, make, and year;
6. If there is a lien holder:
   a. The lien holder's name, address, telephone number;
   b. Lien balance;
   c. Prepayment penalties, if any; and
   d. Other information relevant to the terms and conditions of the lien repayment;
7. A statement by the owner that the vehicle is free and clear of all liens and encumbrances, except those disclosed under subsection (C)(6)(a) and the lien balance is no greater than that disclosed under subsection (C)(6)(b);
8. An authorization by the owner permitting the dealer to market and sell the vehicle on behalf of the owner at a mutually-agreed upon, specified, minimum price;
9. An agreement by the dealer to inform any prospective purchaser that the vehicle is on consignment;
10. An agreement by the dealer that, upon receiving the sale proceeds, the dealer shall immediately satisfy all disclosed liens and ensure that the liens are released;
11. An agreement by the owner that, upon the completion of the sale and after receiving the sale proceeds, the owner shall promptly deliver and endorse the title certificate for reassignment to the purchaser;
12. The expiration date of the consignment contract;
13. An agreement by the dealer to deliver the vehicle to the owner at a specified location on the date that the contract expires or terminates;
14. An agreement by the owner to pay any specified fees due the dealer upon the return of the vehicle, after the expiration or termination of the consignment contract;
15. The date the contract is executed;
16. The dealer's signature; and
17. The owner's signature.

D. A dealer or an owner who adds to a dealer consignment contract a provision not described in this Section shall ensure that the provision does not conflict with or alter the meaning of a provision of this Section.

E. Disposition. When a dealer prepares a dealer consignment contract as prescribed under this Section, the dealer shall give a copy to the owner and keep the original at the dealer's established place of business for three years after the date that the contract expires or terminates, or the vehicle is sold.

F. Disclaimer. In complying with this Section, a dealer shall not interpret or claim compliance to be an approval by the state of the fairness, validity, or legality of a dealer consignment contract. This Section furnishes only information required in a dealer consignment contract. It does not detail any additional contractual requirements that may be defined under other Arizona statutes.

Historical Note

New Section recodified from R17-4-246 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4234, effective November 15, 2002 (Supp. 02-3).

R17-5-407. Motor Vehicle Repossession

A. The Division shall not transfer a title when the ownership of a motor vehicle titled in this state or another state reverts through operation of state law to a lienholder of record through repossession unless the following conditions are met:
1. The vehicle is physically located in this state;
2. A notice of lien is filed with the Division;
3. A completed affidavit from the lienholder is submitted to the Division stating that the vehicle is physically located in this state and was repossessed on default pursuant to the terms of the lien and applicable law and that this state, its agencies, employees, and agents shall not be held liable for relying on the contents of the affidavit; and
4. In addition to the information required in subsection (A)(3), the affidavit contains the following information:
   a. The Vehicle Identification Number (VIN),
   b. The vehicle model year,
   c. The vehicle make,
   d. The registered owner's name,
   e. The date of repossession,
   f. The state in which the vehicle is titled,
   g. The lienholder company name,
   h. The lienholder agent or representative name,
   i. Lienholder signature, and
   j. Notary or Motor Vehicle Division agent signature.

B. The Division shall accept out-of-state affidavits of repossession that comply with the requirements in subsections (A)(3) and (4) and subsection (C) if all of the following apply:
1. The affidavit is submitted by an Arizona licensed dealer, and
2. The Arizona licensed dealer is transferring the title into the dealership's name.

C. A lienholder may sell a repossessed vehicle without transferring the title into the lienholder's name by completing a Bill of Sale for submission to the Division. The Bill of Sale may be combined with the affidavit of repossession and shall contain the following information:
1. The buyer's name;
2. The sale date;
3. Buyer's street address, including the city, state, and zip code;
4. Name of new lienholder, if applicable;
5. New lien date, if applicable;
6. Odometer certification statement, including odometer reading, and an area for the buyer's name and signature to acknowledge the odometer certification;
7. A statement that the buyer is aware of the odometer certification made by the seller;

8. The seller's name;
9. The seller's notarized signature;
10. The seller's address, including city, state, and zip code; and

D. A completed repossession affidavit as prescribed in this Section is proof of ownership, right of possession, and right of transfer.

E. Disclaimer. The Division has no responsibility relating to foreclosure on real property under A.R.S Title 33, Chapter 7.

Historical Note

New Section recodified from R17-4-260 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 10 A.A.R. 3399, effective October 2, 2004 (Supp. 04-3).

R17-5-408. Resale of a New Motor Vehicle

A. A new motor vehicle dealer, as defined in A.R.S. § 28-4301, that sells a new motor vehicle that was delivered to a previous purchaser, shall provide written notice to the new purchaser under subsection (B).

B. A dealer shall ensure that the notice under A.R.S. § 28-4422 contains the following information:
1. The name of the dealership;
2. A vehicle description, including year, make, and vehicle identification number (VIN);
3. A statement that the vehicle was delivered to a previous purchaser;
4. The printed name of the new purchaser; and
5. The signature of the new purchaser (initials are not acceptable) indicating that the new purchaser has received the notice.

C. The new motor vehicle dealer shall:
1. Provide a copy of the notice under subsection (B) to the new purchaser, and
2. Keep a copy of the signed notice under subsection (B) at the new motor vehicle dealer's established place of business for at least three years.

D. The new motor vehicle dealer is not required to submit to the Division the notice under subsection (B) unless otherwise required by state or federal law.

E. A new motor vehicle dealer shall not add additional language to the notice that would conflict with, or alter, the intent of the provisions specified in subsection (B).

Historical Note

New Section made by final rulemaking at 12 A.A.R. 225, effective March 11, 2006 (Supp. 06-1).

ARTICLE 5. MOTOR CARRIER FINANCIAL RESPONSIBILITY

R17-5-501. Definitions

In addition to the definitions provided under A.R.S. §§ 28-4001, 28-4031, 28-5201, and 28-5431, the following terms apply to this Article, unless the context otherwise requires:

"Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.

"Initial motor vehicle registration" means the first time a motor carrier registers a specific motor vehicle or a vehicle combination in Arizona.

"Insurance company" means an entity that is in the business of issuing motor carrier liability insurance policies.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 235, effective March 11, 2003 (Supp. 03-1). Amended by final rulemaking at 18 A.A.R. 2365, effective November 10, 2012 (Supp. 12-3).

R17-5-502. Repealed

Historical Note

New Section recodified from R17-4-226 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-503. Repealed

Historical Note

New Section recodified from R17-4-226.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 13 A.A.R. 858, effective March 6, 2007 (Supp. 07-1).

R17-5-504. Requirement to Submit Proof of Financial Responsibility; Applicability; Procedure; Exception

A. If a person or motor carrier subject to financial responsibility requirements under A.R.S. § 28-4032 does not insure its motor vehicle or vehicle combination through an insurance company that electronically reports to the Department under A.R.S. § 28-4148 and Article 8 of this Chapter, the person or motor carrier shall submit proof of financial responsibility as prescribed in this Section, and in the amount required under A.R.S. § 28-4033(A):
1. On initial motor vehicle registration, or
2. On written request by the Department.

B. An insurance company, its managing general agent, broker, or agent may submit proof of financial responsibility to the Department on behalf of a person or motor carrier.

C. As proof of financial responsibility, a person or motor carrier shall submit to the Department a photocopy of:
1. A valid liability insurance policy;
2. A binder dated within 90 days of filing with the Department;
3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the agency;
4. A completed and signed Certificate of Liability Insurance form, issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state, naming the Arizona Department of Transportation as the certificate holder; or
5. A certificate of self-insurance issued by the Department after a person or motor carrier meets the requirements of R17-5-810 and A.R.S. §§ 28-4007 and 28-4135.

D. Before a binder submitted as proof of financial responsibility expires, a motor carrier shall submit:
1. A binder from an insurance company other than the insurance company named in the first binder; or
2. Proof of financial responsibility listed in subsections (C)(1) or (C)(3) through (5).

E. A person or motor carrier that maintains a valid USDOT number and files proof of financial responsibility with the Federal Motor Carrier Safety Administration under 49 CFR 387 is not required to submit additional proof of financial responsibility under this Section, except on written request by the Department.

Historical Note

New Section recodified from R17-4-445 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 235, effective March 11,

STATUTES

28-366. Director; rules
The director shall adopt rules pursuant to title 41, chapter 6 as the director deems necessary for:
1. Collection of taxes and license fees.
2. Public safety and convenience.
3. Enforcement of the provisions of the laws the director administers or enforces.
4. The use of state highways and routes to prevent the abuse and unauthorized use of state highways and routes.

28-2058. Transfer of title; odometer mileage disclosure statement
A. When the owner of a registered or unregistered vehicle transfers or assigns the owner's title or interest to the vehicle:
1. If the vehicle is registered:
(a) The owner shall endorse on the certificate of title or title transfer form an assignment with the warranty of title.
(b) Except as provided in section 28-2094, the owner shall deliver the certificate of title or title transfer form to the purchaser or transferee at the time of delivery of the vehicle to the purchaser or transferee.
(c) The registration of the vehicle expires and the owner shall transfer the license plates, surrender the license plates to the department or an authorized third party or submit an affidavit of license plate destruction within thirty days after the owner transfers or assigns the owner's title or interest in the vehicle.
(d) Except as provided in section 28-2091, the acquiring owner shall apply for registration or a certificate of title, or both, within fifteen days after the relinquishing owner transfers or assigns the relinquishing owner's title or interest in the vehicle. The director may prorate the registration period as the director deems necessary to coincide with emissions inspection requirements.
(e) Except if the acquiring owner is an insurer who acquires the vehicle pursuant to a claim settlement, the acquiring owner shall display on the vehicle a temporary registration plate, another permit or a valid license plate as prescribed by the department until ownership of the vehicle is transferred in the department's records.
2. Regardless of whether or not the vehicle is registered:
(a) Except as provided in subsection B of this section, the owner shall deliver to the purchaser or transferee an odometer mileage disclosure statement in a form prescribed by the director.
(b) Except as provided in sections 28-2051, 28-2060 and 28-2091, the purchaser or transferee shall present the certificate of title or title transfer form to the department with the required fee within fifteen days after the transfer and:
(i) The department shall issue a new certificate of title.
(ii) If required, the purchaser or transferee shall apply for and obtain registration, and the department shall issue new license plates to the purchaser or transferee.
B. The odometer disclosure requirement of subsection A of this section does not apply to:
1. A motor vehicle that is ten model years of age or older.
2. A motor vehicle that has a gross vehicle weight rating of sixteen thousand pounds or more.
3. A vehicle that is not self-propelled.
4. A motor vehicle that is sold directly by the manufacturer to an agency of the United States in conformity with contractual specifications.
5. A new motor vehicle that is purchased for resale and not for use by the purchaser.

28-2060. Transfer of ownership by operation of law
A. Except as provided in subsection F of this section, when the title or interest of an owner of a registered vehicle passes to another other than by voluntary transfer, the transferee shall obtain a transfer of registration within thirty days after the passing of the title or interest.
B. Within thirty days after passing of the title or interest of an owner of a registered or unregistered vehicle, the transferee of the vehicle shall obtain a new certificate of title on proper application and presentation of the last certificate of title, if available, and such instruments or documents of authority or certified copies of the instruments or documents that are sufficient or required by law to evidence or effect a transfer of title or interest in or to chattels that pass to another other than by voluntary transfer.
C. If a motor vehicle has been forfeited to the federal government and is sold at public auction pursuant to federal law, the purchaser at the sale takes title free of any liens or encumbrances if federal law so provides. If a motor vehicle has been forfeited to any local or state government entity, agency or political subdivision or to any federal

law enforcement agency after the disposition of all claims under the laws of this state, the order of the court forfeiting the vehicle shall transfer good and sufficient title to the transferee and to any subsequent purchaser or transferee. The purchaser or transferee shall register the motor vehicle within thirty days after the sale or transfer, and the department shall issue a certificate of title to the purchaser or transferee on presentation of the evidence of title without any reference to liens or encumbrances.
D. The transferee of a vehicle required to have a certificate of title and be registered under section 28-2153 or a mobile home required to have a certificate of title under section 28-2063 may obtain a transfer of registration to the transferee and a new certificate of title if both of the following occur:
1. The title or interest of the owner of the vehicle passes to another either:
(a) Through notice and sale under the conditions contained in any security agreement, chattel mortgage, conditional sale or other evidence of lien or under the authority given by statute in cases arising under sections 33-1021 and 33-1022 or under section 33-1704.
(b) For a mobile home the lien on which is also a lien on real property, through a contract for conveyance of real property, deed of trust or mortgage.
2. Satisfactory evidence is presented to the director that the sale of the vehicle was fairly and lawfully conducted in conformity with all requirements of law after due notice to the former owner. In cases arising under section 33-1704, a declaration that is signed by both the seller and the buyer and that sets forth compliance with section 33-1704 constitutes satisfactory evidence, and the director may rely on that declaration.
E. Any administrator, executor, trustee or other representative of the owner, a peace officer or a person repossessing a vehicle under the terms of any conditional sales contract, lease, chattel mortgage or other security agreement or a purchaser at a sale foreclosing a lien, or the assignee or legal representative of any such person, may operate a vehicle from the place of repossession or place where it was formerly kept to a garage or place of storage in the county or state where the contract was recorded or where the person repossessing the vehicle resides or to any other garage or place of storage that is not more than seventy-five miles from the place of repossession or place where the vehicle was formerly kept by the owner if either of the following conditions exists:
1. The license plates assigned to the vehicle are displayed on the vehicle.
2. If license plates are not displayed, a written permit has been obtained from the department or the local authorities having jurisdiction over the highways and a placard that bears the name and address of the person authorizing the movement and that is legible from a distance of one hundred feet during daylight is displayed in plain sight on the vehicle.
F. If ownership of a motor vehicle for which a certificate of title has been issued in this state or another state reverts through operation of state law to a lienholder of record through repossession pursuant to the terms of a security agreement or through another similar instrument that is valid in such state, an affidavit by the lienholder of record stating that the vehicle was repossessed on default of the terms stated in the security agreement or similar instrument is proof of ownership, right of possession and right of transfer. If the lienholder of record is a financial institution as defined in section 28-4301, the lienholder of record shall electronically submit the repossession affidavit to the department. The director shall prescribe the form and content of the affidavit. This state and its agencies, employees and agents are not liable for relying in good faith on the content of the affidavit.

28-4301. Definitions
In this chapter, unless the context otherwise requires:
1. "Area of responsibility" means the area surrounding an individual dealer that the factory designates as that dealer's individual primary geographic territory for the purpose of marketing, promoting, selling and leasing new motor vehicles. In the absence of the factory designated area, the area of responsibility is that geographical area surrounding a dealer that lies closer to that dealer than to other dealers of the same line-make.
2. "Automotive recycler" means a person who is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and who dismantles six or more vehicles in a calendar year.
3. "Branch license" means a license that is issued by the director to a licensed motor vehicle dealer and that permits the licensee to sell motor vehicles from an established place of business within the same county but other than the original or principal place of business for which the license was issued.

4. "Broker" means a person who for any fee, commission or other valuable consideration offers to provide, provides or represents that the person will provide a service of arranging or assisting in effecting the purchase of a motor vehicle and who is not:
(a) A new motor vehicle dealer or an employee or agent of a new motor vehicle dealer.
(b) A used motor vehicle dealer or an employee or agent of a used motor vehicle dealer.
(c) A manufacturer or employee or agent of a manufacturer.
(d) An auctioneer or engaged in the auto auction business.
(e) A wholesale motor vehicle dealer.
5. "Community" means the relevant market area. For the purposes of this paragraph, "relevant market area" means the incorporated city or town in which the franchise is located.
6. "Distributor" means a person who either:
(a) Sells or distributes new motor vehicles to new motor vehicle dealers in this state.
(b) Maintains distributor representatives in this state.
7. "Distributor branch" means a branch office maintained or availed of by a distributor for either:
(a) The sale of new motor vehicles to new motor vehicle dealers in this state.
(b) Directing or supervising its representatives in this state.
8. "Established place of business":
(a) Means a permanent enclosed building or structure that is owned either in fee or leased with sufficient space to display two or more motor vehicles of a kind and type that the dealer is licensed to sell and that is devoted principally to the use of a motor vehicle dealer in the conduct of the business of the dealer.
(b) In the case of a used motor vehicle dealer, trailer dealer or semitrailer dealer:
(i) Need not be a permanent building or structure or part of a permanent building or structure.
(ii) May be a vacant lot or part of a vacant lot.
(iii) Does not mean or include a residence, tent, temporary stand or temporary quarters or permanent quarters occupied pursuant to a temporary arrangement.
(c) In the case of an automotive recycler, means a permanent site or location at which the business of an automotive recycler is or will be conducted.
9. "Exhibitor" means a manufacturer of new motor homes that exhibits new motor homes at a special event.
10. "Factory branch" means a branch office maintained or availed of by a manufacturer for either:
(a) The sale of new motor vehicles to distributors or the sale of new motor vehicles to new motor vehicle dealers in this state.
(b) Directing or supervising its representatives in this state.
11. "Financial institution" means a bank, trust company, savings and loan association, credit union, consumer lender, international banking facility or holding company that is licensed, regulated or insured by the department of financial institutions, the federal deposit insurance corporation, the office of thrift supervision, the comptroller of the currency, the national credit union share insurance fund or the national credit union administration.
12. "Franchise" means a contract between two or more persons if all of the following conditions are included:
(a) A commercial relationship of definite duration or continuing indefinite duration is involved.
(b) The franchisee is granted the right to offer, sell and service in this state new motor vehicles manufactured or distributed by the franchisor.
(c) The franchisee, as a separate business, constitutes a component of the franchisor's distribution system.
(d) The operation of the franchisee's business is substantially associated with the franchisor's trademark, service mark, trade name, advertising or other commercial symbol designating the franchisor.
(e) The operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts and accessories.
13. "Franchisee" means a person who both:
(a) Receives new motor vehicles from the franchisor under a franchise.
(b) Offers and sells to and services new motor vehicles for the general public.
14. "Franchisor" means a person who both:
(a) Manufactures or distributes new motor vehicles.
(b) May enter into a franchise.
15. "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.
16. "Lead" means any retail consumer who satisfies all of the following:
(a) Responds to a factory-directed program that obtains consumer contact information and that provides such information to one or more dealers.

(b) Expresses an interest to the factory in purchasing, leasing or acquiring any vehicle or product, service or financing available from the dealers of that factory.
(c) Does not qualify for any reasonable factory sponsored employee, retiree or vendor new vehicle purchase program or any other reasonable similar factory new vehicle purchase program.
17. "Line-make" means those motor vehicles that are offered for sale, lease or distribution under a common name, trademark, service mark or brand name of the manufacturer of those same motor vehicles.
18. "Major component part" includes a motor vehicle or vehicle part that the manufacturer has assigned any factory, motor, serial or other identification number or mark.
19. "Manufacturer" means any person who either:
(a) Manufactures or assembles new motor vehicles.
(b) Manufactures or installs on previously assembled truck chassis special bodies or equipment that when installed forms an integral part of the new motor vehicle and that constitutes a major manufacturing alteration, excluding the installation of a camper on a pickup truck.
20. "Motor home" means a motor vehicle that is primarily designed as temporary living quarters and that:
(a) Is built onto as an integral part of, or is permanently attached to, a motor vehicle chassis.
(b) Contains at least four of the following independent life support systems if each is permanently installed and designed to be removed only for purposes of repair or replacement:
(i) A cooking facility with an onboard fuel source.
(ii) A gas or electric refrigerator.
(iii) A toilet with exterior evacuation.
(iv) A heating or air conditioning system with an onboard power or fuel source separate from the vehicle engine.
(v) A potable water supply system that includes at least a sink, a faucet and a water tank with an exterior service supply connection.
(vi) A 110-125 volt electric power supply.
21. "Motor vehicle" means an automobile, motor bus, motorcycle, truck or truck tractor or any other self-propelled vehicle, trailer or semitrailer.
22. "Motor vehicle dealer" means a new motor vehicle dealer, a used motor vehicle dealer, a public consignment auction dealer, a broker or a wholesale motor vehicle auction dealer, excluding a person who comes into possession of a motor vehicle as an incident to the person's regular business and who sells, auctions or exchanges the motor vehicle.
23. "New house trailer dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new house trailers or used house trailers taken in trade on new house trailers. For the purposes of this paragraph, "house trailer" means a vehicle, other than a motor vehicle, that is built on a chassis designed for being drawn on the highways by a motor vehicle and that is designed for human habitation.
24. "New motor vehicle" means a motor vehicle, other than a used motor vehicle, that is held either for:
(a) Sale by the franchisee who first acquired the vehicle from the manufacturer or distributor of the vehicle.
(b) Sale by another franchisee of the same line-make.
25. "New motor vehicle dealer" means a person who buys, sells, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, new motor vehicles or used motor vehicles taken in trade on new motor vehicles or used vehicles purchased for resale.
26. "Off-premises display and sales" means a promotion or sale of motor vehicles for a period of time as specified by the director that both:
(a) Is sponsored by a licensed motor vehicle dealer, the licensed motor vehicle dealer's agents or the manufacturer.
(b) Takes place at a location within the same county but not at the licensee's established place of business.
27. "Off-premises exhibition" means the exhibition of a motor vehicle for a period of time as specified by the director at a location within the same county but not at the established place of business of a licensed motor vehicle dealer and at which a solicitation or sale does not occur.
28. "Provisional automotive recycler's license" means a license that both:
(a) Is issued by the department only in conjunction with an application for an automotive recycler's license.
(b) Permits the applicant or applicants to conduct the business of an automotive recycler regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.
29. "Provisional dealer's license" means a license that both:
(a) Is issued by the department only in conjunction with an application for a dealer's license.
(b) Permits the applicant or applicants to conduct the business of a motor vehicle dealer regulated by this chapter pending completion of the criminal records check pursuant to section 28-4361.

30. "Public consignment auction dealer" means a person who at the public consignment auction dealer's established place of business or at an authorized off-premises location pursuant to the requirements of section 28-4401 is in the business of both of the following:
(a) Conducting live auctions with a licensed auctioneer verbally calling for and accepting bids.
(b) Providing live auction services to the public on a consignment contract basis.
31. "Retail consumer" means any person purchasing, leasing or acquiring or possibly purchasing, leasing or acquiring a vehicle or product, service or financing not for resale.
32. "Service" means any service that is sold, leased or provided to retail consumers and that directly relates to the ownership or leasing of a new or used motor vehicle, including extended service contracts or motor vehicle warranty and nonwarranty repairs or maintenance, including both parts and labor.
33. "Special event" means an exhibition of new motor homes by a motor vehicle dealer licensed to sell new motor homes or an exhibitor for a period of time specified by the director at a location in this state other than the licensee's or exhibitor's established place of business.
34. "Used motor vehicle" means a motor vehicle that has been sold, bargained, exchanged or given away or the title to the motor vehicle has been transferred from the person who first acquired the vehicle from the manufacturer, or importer, dealer or agent of the manufacturer or importer, and that has been placed in bona fide consumer use. For the purposes of this paragraph, "bona fide consumer use" means actual operation by an owner who acquired a new motor vehicle both:
(a) For use in the owner's business or for pleasure or otherwise.
(b) For which a certificate of title has been issued or that has been registered as provided by law.
35. "Used motor vehicle dealer" means a person, other than a new motor vehicle dealer, who buys, sells, auctions, exchanges or offers or attempts to negotiate a sale or exchange of an interest in, or who is engaged in the business of selling, seven or more used motor vehicles in a continuous twelve month period. Used motor vehicle dealer does not include a wholesale motor vehicle auction dealer or a public consignment auction dealer.
36. "Wholesale motor vehicle auction dealer" means a person who both:
(a) Is in the business of providing auction services solely in wholesale transactions to motor vehicle dealers licensed by this state or any other jurisdiction.
(b) Does not buy, sell or own the motor vehicles the auction dealer auctions in the ordinary course of business.
37. "Wholesale motor vehicle dealer" means a person who sells used motor vehicles only to licensed motor vehicle dealers.

28-4303. Administration
The director shall supervise and regulate all persons required by this chapter to be licensed. In the supervision and regulation required by this section, the director may:
1. Investigate as the director deems necessary and for that purpose the director may require the aid and assistance of the highway patrol division.
2. Conduct hearings.
3. Compel the attendance of witnesses at the hearings.

28-4362. Application; fee; bond
Applications shall be accompanied by:
1. The filing fees prescribed in section 28-4302, and each licensee shall pay the annual license fee prescribed in section 28-4302.
2. A bond that:
(a) Is in a form to be approved by the director.
(b) Is in an amount prescribed by the director of at least twenty thousand dollars for an automotive recycler's license and not more than one hundred thousand dollars for all other licenses.
(c) Is executed by a surety company authorized to transact business in this state as surety on the bond with the applicant as principal obligor on the bond and the state as obligee.
(d) Is cancellable only on at least sixty days' prior notice to the director.
(e) Inures to the benefit of a person who suffers loss because of either:
(i) Nonpayment by the dealer of customer prepaid title, registration or other related fees or taxes.
(ii) The automotive recycler's or the dealer's failure to deliver in conjunction with the sale of a vehicle a valid vehicle title certificate free and clear of any prior owner's interests and all liens except a lien created by or expressly assumed in writing by the buyer of the vehicle.
3. A copy of the dealer's current transaction privilege tax license.

28-4410. Consignment contracts; definitions

A. A dealer in motor vehicles, trailers and semitrailers may possess and offer for sale a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title or title transfer form in the dealer's possession if the dealer possesses all of the following:

1. A consignment contract or dealer acquisition contract.
2. The most recent registration card for the vehicle.
3. A statement by the lienholder disclosing all unsatisfied liens, if applicable.

B. A dealer may complete the sale of a motor vehicle, trailer or semitrailer offered for sale under subsection A of this section when the dealer possesses verification that all liens on the motor vehicle, trailer or semitrailer have been satisfied by the dealer or assumed by the purchaser.

C. A dealer who offers a vehicle for sale on consignment shall inform a prospective customer that the vehicle is on consignment to the dealer.

D. The director shall adopt rules on the minimum form and content of consignment contracts and dealer acquisition contracts.

E. This chapter does not allow the consignment of motor vehicles from one licensee to another licensee.

F. A dealer in motor vehicles, trailers or semitrailers may offer for sale or sell a motor vehicle, trailer or semitrailer without having a duly or regularly assigned certificate of title in the dealer's possession if the dealer possesses a complete photocopy of the duly or regularly assigned certificate of title, the original of which has been delivered to a financial institution or a subsidiary of the financial institution pursuant to an inventory financing arrangement.

G. For the purposes of this section:

1. "Consignment contract" means an agreement executed by both the owner of a vehicle and a licensed motor vehicle dealer pursuant to which the vehicle is delivered to the dealer to sell for the owner.
2. "Dealer acquisition contract" means an agreement that both:

(a) Is executed by both the owner of a vehicle, the certificate of title for which is in possession of a lienholder in accordance with the laws of this state or another state, and a licensed motor vehicle dealer.

(b) Transfers ownership of the vehicle described in subdivision (a) of this paragraph to a licensed dealer from a person other than a manufacturer, distributor, franchisor or dealer.

3. "Inventory financing arrangement" means an agreement under which a dealer grants a security interest to a financial institution under the provisions of title 47, chapter 9.

28-4410.01. Public consignment auction dealers; exemptions; notices; requirements; penalties; payment of taxes; wholesale motor vehicle dealer prohibition

A. A public consignment auction dealer is exempt from the following:

1. An implied warranty of merchantability described in section 28-4412, subsection B and section 44-1267.
2. An emissions inspection pursuant to section 49-542, subsection D.

B. A public consignment auction dealer shall post at the public consignment auction dealer's established place of business a sign indicating that the public consignment auction dealer is exempt from the provisions described in subsection A of this section.

C. A public consignment auction dealer, on transferring a motor vehicle by sale, shall provide written notice to the department of transportation and the department of revenue within fifteen days after the transfer on a form jointly prescribed by the directors of the departments that includes:

1. The date of the transfer.
2. The name and address of the seller.
3. The name and address of the purchaser.
4. The vehicle identification number of the motor vehicle.
5. The make and model of the motor vehicle.
6. The successful bid price and any premiums or commissions paid associated with the auction of the motor vehicle.
7. Notice as to whether the vehicle is a salvage vehicle.

D. A public consignment auction dealer who fails to provide written notice to the department within fifteen days after transferring a motor vehicle, as prescribed by subsection C of this section, shall pay the department a penalty of eight dollars for the first month and four dollars for each additional month that the notice is not provided, not to exceed a total of one hundred dollars.

E. A public consignment auction dealer, on transferring a motor vehicle by sale, shall give written notice to the purchaser at the time of delivery of the motor vehicle to the purchaser in the form of an invoice or on a form prescribed by the director that includes:

1. The date of the transfer.

2. The vehicle identification number of the motor vehicle.
3. The make and model of the motor vehicle.
4. The successful bid price and any premiums or commissions paid associated with the auction of the motor vehicle.
5. Notice as to whether the vehicle is a salvage vehicle.
F. A public consignment auction dealer shall keep and maintain at the public consignment auction dealer's established place of business a permanent record in a form prescribed by the director. The permanent record shall include the information prescribed by subsection C of this section and contain a description of all motor vehicle transfers and sales. The public consignment auction dealer shall make the permanent record available for inspection by the department of transportation, the department of revenue or any peace officer.
G. A public consignment auction dealer shall do all of the following:
1. Inform the purchaser of a motor vehicle that the purchaser is responsible for the emission inspection requirements described in section 49-542, subsection D.
2. Comply with the consignment contract requirements prescribed in section 28-4410 if the motor vehicle is acquired from a person other than a licensee, except that the public consignment auction dealer shall obtain documentation that shows that the seller of the vehicle is the legal owner of the vehicle.
3. Comply with the requirements of section 28-4409 relating to evidence of ownership if the motor vehicle is acquired from another licensee.
4. Comply with the requirements of section 28-2091 relating to salvage certificates of title.
H. If a public consignment auction dealer violates this section, the director may do either of the following:
1. Suspend or cancel the dealer's license.
2. Impose a civil penalty of at least one thousand dollars but not more than three thousand dollars as prescribed in this section or in section 28-4501.
I. This section does not exempt a public consignment auction dealer from any transaction privilege tax imposed pursuant to title 42, chapter 5.
J. A wholesale motor vehicle dealer shall not sell motor vehicles to a public consignment auction dealer.

28-4422. Resale of new motor vehicles
A motor vehicle dealer may resell a new motor vehicle if all of the following apply:
1. A certificate of title is not transferred from the person who first acquired the new motor vehicle from the manufacturer or importer or agent of the manufacturer or importer.
2. The new motor vehicle is returned to the selling motor vehicle dealer.
3. The motor vehicle dealer gives written notice to the retail consumer that the vehicle was delivered to a previous purchaser.
4. The retail consumer signs an acknowledgment of receipt of the written notice prescribed by paragraph 3 and the motor vehicle dealer maintains a copy of the acknowledgment in the dealer's records.

BOARD OF NURSING (R-17-0502)
Title 4, Chapter 19, Article 1, Definitions and Time-Frames; Article 2, Arizona Registered and Practical Nursing Programs; Refresher Programs; Article 3, Licensure; Article 5, Advanced Practice Registered Nursing; Article 8, Nursing Assistants and Certified Medication Assistants

Amend: R4-19-101; Table 1; R4-19-201; R4-19-205; R4-19-207; R4-19-209; R4-19-216; R4-19-301; R4-19-305; R4-19-312; R4-19-511; R4-19-801; R4-19-802

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: D-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE: April 18, 2017

SUBJECT: **BOARD OF NURSING (R-17-0502)**
Title 4, Chapter 19, Article 1, Definitions and Time-Frames; Article 2, Arizona Registered and Practical Nursing Programs; Refresher Programs; Article 3, Licensure; Article 5, Advanced Practice Registered Nursing; Article 8, Nursing Assistants and Certified Medication Assistants

Amend: R4-19-101; Table 1; R4-19-201; R4-19-205; R4-19-207; R4-19-209; R4-19-216; R4-19-301; R4-19-305; R4-19-312; R4-19-511; R4-19-801; R4-19-802

Purpose of the Agency and Summary of What the Rulemaking Does

The purpose of the Board of Nursing (Board) is "to promote the safe and professional practice of nursing and its related professions." Laws 2012, Ch. 33, § 3.

This rulemaking amends twelve rules and one table in A.A.C. Title 4, Chapter 19. The Board indicates that the rulemaking is generally intended to decrease regulatory burdens and increase agency efficiency.

Proposed Action

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

- R4-19-101: The term "family" is defined, for purposes of Section 511, as "individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved."
- Table 1: The table, providing the Board's licensing time-frames, is being modified.
- R4-19-201: The Board is reducing regulatory burdens on schools related to clinical contracts. The Board believes that while the presence of a contract is necessary to obtain

clinical placement, the actual details of such a contract are best left to the parties bound by it.

- R4-19-205, R4-19-207, R4-19-209: Obsolete provisions related to limitations on enrollment in schools or programs are being eliminated.
- R4-19-216: Minimum requirements for Certified Nursing Assistant (CNA) refresher programs offered by private businesses are being clarified and made less stringent. If such a business holds insurance related to the program, a $15,000 coverage minimum is now stated in the rule. If a business chooses to hold a surety bond instead of insurance, the minimum rating for that bond will be "A minus or better" rather than "A or better."
- R4-19-301, R4-19-305: Clarifying changes are being made.
- R4-19-312: Changes will allow graduates of international nursing programs to meet the same practice requirement as graduates of domestic nursing programs.
- R4-19-511: Changes are intended to prohibit nurse practitioners from prescribing controlled substances to persons with whom the nurse has a close familial relationship that could affect the nurse practitioner's judgment when prescribing.
- R4-19-801: The Board is reducing regulatory burdens on schools related to clinical contracts. In addition, obsolete provisions related to a felony bar for CNAs are being eliminated.
- R4-19-802: Consistent with the changes made to Section 216, the Board is adding language that allows private businesses who operate CNA refresher programs to hold insurance in lieu of a surety bond.

Exemption or Request and Approval for Exception from the Moratorium

The Board received an exception from the moratorium on September 1, 2016.

Substantive or Procedural Concerns

None.

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

Yes. As authority for the rules, the Board cites to a number of statutes, including A.R.S. § 32-1606(A)(1), which allows the Board to "[a]dopt and revise rules necessary to carry into effect this chapter [Title 32, Chapter 15, Nursing]." In addition, A.R.S. § 32-1606(B)(11), in relevant part, requires the Board to "[a]dopt rules establishing those acts that may be performed by a registered nurse practitioner in collaboration with a licensed physician…."

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?

The Board indicates that it did not receive any comments on the rulemaking.

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

No. Only clarifying and technical changes have been made between the proposed and final rules, most which were made 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?

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?

None of the amendments make the rules more stringent than federal law. As the Board notes in the preamble to the Notice of Final Rulemaking, there are federal minimum requirements for nursing assistant programs and inclusion on the nursing assistant register. Apart from requiring proof of legal presence, as A.R.S. § 41-1080 mandates, the state requirements to be listed on the nursing assistant registry are no more stringent than any federal requirements.

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, certificates, and approvals issued under the rules are general permits.

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 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: May 2, 2017 **AGENDA ITEM: D-3**

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

FROM: GRRC Economic Team

DATE: April 18, 2017

SUBJECT: **BOARD OF NURSING (R-17-0502)**
Title 4, Chapter 19, Article 1, Definitions and Time-Frames; Article 2, Arizona Registered and Practical Nursing Programs; Refresher Programs; Article 3, Licensure; Article 5, Advanced Practice Registered Nursing; Article 8, Nursing Assistants and Certified Medication Assistants

Amend: R4-19-101; Table 1; R4-19-201; R4-19-205; R4-19-207; R4-19-209; R4-19-216; R4-19-301; R4-19-305; R4-19-312; R4-19-511; R4-19-801; R4-19-802

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 Board of Nursing is proposing to amend many rules in Chapter 19. The rules in Chapter 19 regulate the nursing profession in Arizona. The Board works to protect and promote the welfare of the public by ensuring that each person holding a nursing license or certificate is competent to practice safely.

This rulemaking makes many various improvements to the Board's nursing rules. Some of these improvements were identified in the most recent five-year regulatory review, and others were identified in the report to the Governor in 2015 via Executive Order 2015-01. These diverse improvements include improved electronic communication rules, clarification of prescription limitations to the family members of nurse practitioners, elimination of enrollment limitations for nursing programs, and increased flexibility for nursing program bond requirements.

Key stakeholders are the Board, nurse training programs, nurses, nursing assistants, and nurse practitioners.

The Board regulates approximately:

- 85,000 Registered Nurses (RNs)
- 6,000 Registered Nurse Practitioners (RNPs)
- 11,000 Licensed Practical Nurses (LPNs)
- 27,000 Certified Nursing Assistants (CNAs)
- 23 Certified Medication Assistants (CMAs)
- 31 RN programs
- 5 LPN programs
- 101 CNA programs
- 2 CMA programs
- 13 refresher programs

1. <u>Costs and Benefits for:</u>

a. The implementing agency:

The Board expects that improved electronic communications and eliminating the review of nursing school contracts will reduce administrative costs.

b. Political subdivisions:

Political subdivisions are not directly impacted by this rulemaking.

c. Businesses:

Training programs are the businesses that will be impacted by these rules. These businesses will benefit by having the flexibility to choose a bond or insurance.

d. Small businesses:

Some training programs may qualify as small businesses. These will benefit in the same manner as all businesses listed above.

e. Consumers directly affected by the rulemaking:

The Board does not anticipate that consumers will be directly impacted by these rules.

2. <u>Do the probable benefits outweigh the probable costs?</u>

The Board notes that these improvements to the rules will not generate significant costs, but these improvements will result in minimal to moderate benefits for stakeholders.

3. <u>Analysis of methods to reduce the small business impact:</u>

The Board indicates that the increased flexibility offered on bond ratings will benefit small businesses.

4. The probable effect on state revenues:

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

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

The Board indicates that there are no less intrusive or costly alternatives to this rulemaking.

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

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

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

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.

Doug Ducey
Governor

Joey Ridenour
Executive Director

Arizona State Board of Nursing
4747 N. 7th Street, Suite 200
Phoenix, AZ 85014
Phone (602) 771-7800 Fax (602) 771-7888

March 17, 2017

Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Av STE 402
Phoenix, Arizona 85007

Re: Title 4, Chapter 19. Arizona State Board of Nursing: R4-19-101, Table 1., R4-19-201, R4-19-205, R4-19-207, R4-19-209, R4-19-216, R4-19-301, R4-19-305, R4-19-312, R4-19-511, R4-19-801, R4-19-802

Enclosed are the final rules identified above that have been approved by the Arizona State Board of Nursing (Board) subject to the approval of the Governor's Regulatory Review Council (Council) pursuant to A.R.S. § 41-1052. The Board engaged in this rulemaking to reduce regulatory burdens on its regulated population, including nursing programs, refresher programs, nursing assistant programs, and individuals regulated by the Board. Additionally, the Board seeks to provide clarity to controlled substance prescribing limitations that will also enhance public protection, and make some technical rule amendments.

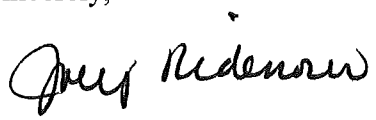
As required by the Administrative Procedure Act, the Notice of Docket Opening on this rulemaking was filed with the Secretary of State and published in the *Arizona Administrative Register (Register)* on September 23, 2016. A Notice of Proposed Rulemaking was published in the *Register* on October 14, 2016. The Board held a public hearing on November 21, 2016 with no persons other than Board staff in attendance. The record closed at 5:00 p.m. on November 21, 2016. No written comments were received during any comment period. There are no substantive differences between the proposed and final rulemaking, and one correction to R4-19-207(D) that there is no change to that section (the proposed rulemaking listed the current version of the rule).

The Board did not review any study to either rely or not rely on to justify this rulemaking. No new full-time employees will be necessary to implement or enforce the rules in this package.

Supporting documentation including the Notice of Final Rulemaking; Economic, Small Business, and Consumer Impact Statement; and the current rules. In transmitting these final rules and the required copies I hereby certify that the referenced rule action is within the power of the Board of Nursing and any legislative standards and was done in compliance with all

appropriate procedures to the best of my knowledge, including disclosure of relevant studies in preamble.

Sincerely,



Joey Ridenour, R.N., M.N., F.A.A.N.
Executive Director

Enclosures: Notice of Final Rulemaking, Economic Impact Statement, Rules 4-19-101 et seq.

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLES 1, 2, 3, 5, 8

PREAMBLE

1.	**Articles, Parts and Sections Affected**	**Rulemaking Action**
	R4-19-101	Amend
	Table 1.	Amend
	R4-19-201	Amend
	R4-19-205	Amend
	R4-19-207	Amend
	R4-19-209	Amend
	R4-19-216	Amend
	R4-19-301	Amend
	R4-19-305	Amend
	R4-19-312	Amend
	R4-19-511	Amend
	R4-19-801	Amend
	R4-19-802	Amend

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

Authorizing statutes: A.R.S. §§ 32-1605.01 (B)(3); 32-1606 (A)(1), (B)(1), (B)(2), (B)(9), (B)(11), (B)(12), (B)(21) and (23); and 32-1650.01 (A).

Implementing statutes: A. R. S. §§ 32-1601 (19), 32-1668, and 41-1002.01.

3. The effective date of the rule:

60 days after filing, as specified in A.R.S. § 41-1032(A).

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. 2985

Notice of Proposed Rulemaking: 22 A.A.R. 2947

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

Name: Emma Mamaluy

Chief Counsel

Address: 4747 N. 7th St. STE 200

Phoenix, AZ 85014

Telephone: 602-771-7844

Fax: 602-771-7888

E-mail: emamaluy@azbn.gov

Website: www.azbn.gov

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

R4-19-101. Definitions

The Board amended this Section to include the definition of "family" as it is used in Chapter 19. This action was identified in the five year rule review of Article 1 which was approved by Council on June 3, 2014. This definition clarifies the persons who would be considered part of the family of either the patient or nurse depending on the context of the rule. This definition will allow the Board to enforce limitations on the prescribing of controlled substances to family members by nurse practitioners (see below R4-19-511).

Table 1. Time-frames

Amendments to this rule are for the purpose of deleting time frames for those licenses the Board no longer issues and reducing time-frames for approval of a CES agency. These changes were identified in a report to the Governor in 2015 regarding EO 2015-01, paragraph 5. Technical changes were also made consistent with statutory changes allowing the board to issue nursing assistant licenses.

R-19-201. Organization and Administration

The Board amended this section to reduce regulatory burdens on schools related to clinical contracts. The Board has enforced these requirements for over a decade, however Board enforcement has neither resulted in increased clinical opportunities for students nor assured that contractual provisions were actually followed such as allowing faculty to determine assignments. While Board staff believes that the presence of a contract is necessary to obtain clinical placement, the details of a clinical contract are best left to the parties, bound by the contract. Regardless of the contents of any agreement, schools and

programs are responsible to obtaining appropriate clinical experiences for each enrolled student.

R4-19-205. Students; Policies and Admissions

R4-19-207. New Programs, Proposal Approval; Provisional Approval;

R4-19-209. Nursing Program Change

References to limitations on program admissions were deleted from these rules because they were rendered obsolete by HB2634 (52nd Legislature, Second Regular Session) which prohibits state agencies from limiting enrollments in any school or program.

R4-19-216. Refresher Programs

The Board amended the language for bonding and fire inspections to be consistent with R4-19-802 which decreased the bond rating from A to A-minus.

R4-19-301. Licensure by Examination

The Board amended this Section to require applicants to provide an e-mail address. This provision would apply to applicants by exam and endorsement because R4-19-303 (Licensure by Endorsement) references this Section. Having an e-mail address allows the Board to communicate with its licensing base with timeliness and efficiency. This will increase communications with licensees and simultaneously decrease costs associated with mailing.

R4-19-305. License Renewal

The Board amended this Section to require renewal applicants to provide an e-mail address. Having a means to efficiently communicate with licensees allows to Board to inform nurses of renewal, request additional applicant information and provide pertinent

information that affects licensure or nursing practice. This will decrease Board costs associated with mailing and may improve licensure time-frames.

R4-19-312. Practice Requirement

The Board amended this Section to allow graduates of international nursing programs to meet the same practice requirement as domestic graduates.

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

The Board amended this Section for the purpose of prohibiting nurse practitioners from prescribing controlled substances to family members, and to prohibit prescribing of controlled substances to any person with whom the nurse has a relationship that could affect the nurse practitioner's judgment when prescribing.

R4-19-801. Common Standards for Certified Nursing Assistants (CNA) and Certified Medication Assistants (CMA)

The Board amended this section to reduce regulatory burdens on schools related to clinical agreements and to correct subsection (A) (6) which relates to the felony bar for CNAs which was rendered obsolete by House Bill 2196 which was adopted by the 52nd Legislature, First Regular Session and signed by the Governor. Regarding clinical agreements, while Board staff believes that the presence of a written agreement is necessary to obtain clinical placement, the details of the agreement are best left to the parties bound by the agreement. Regardless of the contents of any agreement, schools and programs are responsible to obtaining appropriate clinical experiences for each enrolled student.

R4-19-802. CNA Program Requirements

The Board added an option for private businesses who operate CNA programs to hold insurance in lieu of a bond. This is consistent with R4-19-216 which allows an insurance option for refresher program owners.

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

There are no studies that Board either relied on or did not rely on in its evaluation or justification for the rules.

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

Not applicable

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

The Board does not anticipate a substantial economic impact from the majority of the amendments in this rulemaking. The Board regulates approximately 85,000 RNs, 6,000 Registered Nurse Practitioners, 11,000 LPNs, 27,000 CNAs and 23 CMAs. The Board regulates five LPN programs, 31 RN programs, 101 CNA programs, 2 CMA programs and 13 refresher programs. The Board, regulated parties, and the public are all expected to benefit from the clarity and reduced regulatory burden of this rulemaking.

The following amendments are not expected to have a substantial economic impact on the Board, regulated parties, or the general public.

- R4-19-101 was amended to provide a definition of family and is not expected to have and economic impact.
- R4-19-201 and R4-19-801 and may have a modest economic benefit for programs by decreasing costs of negotiating contracts related to Board requirements. These amendments will also decrease administrative burdens on Board staff for ensuring these elements are included in all contracts. Amendments to R4-19-801 clarify NA an program's responsibility related to felony bar information provided to students.
- R4-19-216 was amended to ensure consistency with R4-19-802 and may decrease costs for refresher programs.
- R4-19-511 clarifies prohibitions against prescribing controlled substances to family members and others with whom a nurse practitioner may have relationship and is not expected to have an economic impact.
- R4-19-301 and R4-19-305, requires applicants to furnish an e-mail address consistent with current requirements for advanced practice RNs and CNAs and will allow the Board to efficiently communicate with its licensees regarding renewal dates and other pertinent information related to practice and regulation. With timely notification of more nurses, the Board may experience decreased revenues from late fines, however processing late applications utilizes more Board resources, so overall effects will be negligible. In FY 2014 the Board collected approximately $13,650 in late fees from RN/LPN applicants. Additionally the Board may save in mailing costs to applicants, although most

applicants now voluntarily include their e-mail address, so savings are estimated to be minimal.

- R4-19-312 Clarifies that foreign-educated nurses are under the same practice requirements and U.S. Educated nurses and is not expected to have an economic impact
- R4-19-802 may have a modest economic benefit for programs by allowing programs a choice of a bond or insurance.

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

Rule 4-19-207(D) was corrected to state "no change," as this rulemaking does not modify this rule.

Additional clarifying and technical changes were made at the request of Council staff.

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

The agency did not receive any public or stakeholder comments about the rulemaking.

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

There are no other matters prescribed by statute applicable to the Board or this specific class of rules

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

This rulemaking does not require a permit however R4-19-201, 203, 204, 207, 209, 216, 301, 305, 312, and 801 relate to issuing licenses, certificates and approvals all of which can be considered a general permit under § 41-1001(10).

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

Federal laws (42 CFR 483.150, 42 CFR 483.151, 42 CFR 483.152, 42 CFR 483.154, 42 CFR 483.156, 42 CFR 483.158.) contain the federal minimum requirements for nursing assistant programs and inclusion on the nursing assistant register. Except for proof of legal presence, as required under A.R.S. §41-1080, the requirements to be listed on the nursing assistant registry are no more stringent than minimal federal requirements.

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

. No analysis was submitted

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

There is no material incorporated by reference.

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

Not applicable.

15. The full text of the rules follows:

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

R4-19-101. Definitions

In addition to the definitions in A.R.S. § 32-1601, in this Chapter:

"Abuse" No change

"Administer" No change

“Admission cohort” No change

"Applicant" No change

"Approved national nursing accrediting agency" No change

"Assign" No change

"Certificate or diploma in practical nursing" No change

"Client" No change

“CES” No change

"Clinical instruction" No change

“CMA” No change

“CNA” No change

"CNS" No change

"Collaborate" No change.

"Contact hour" No change

"Continuing education activity" No change

"CRNA" No change

"DEA" No change

"Dispense" No change.

"Dual relationship" No change

“Eligibility for graduation” No change

"Endorsement" No change

"Episodic nursing care" No change

"Failure to maintain professional boundaries" No change

“Family”, as applied to R4-9-511, means individuals who are related by blood, marriage, adoption, legal guardianship, or domestic partnership, or who are cohabitating or romantically involved.

"Full approval" No change

"Good standing" No change

"Independent nursing activities" No change

"Initial approval" No change

"Licensure by examination" No change

"LPN" No change.

"NATCEP" No change

"NCLEX" No change

"Nurse" No change

"Nursing diagnosis" No change

"Nursing practice" No change

"Nursing process" No change

"Nursing program" No change

"Nursing program administrator" No change

"Nursing program faculty member" No change

"Nursing-related activities or duties" No change

"P & D" No change

"Parent institution" No change

"Patient" No change

"Pharmacology" No change

"Physician" No change

"Preceptor" No change

"Preceptorship" No change

"Prescribe" No change

"Proposal approval" No change

"Provisional approval" No change

"Refresher program" No change

“Regionally accredited” No change.

"Register" No change

"Resident" No change

"RN" No change

"RNP" No change

"SBTPE" No change

"School nurse" No change

"Self-study" No change.

"Standards related to scope of practice" No change

“Substance use disorder” No change

"Supervision" No change

"Traineeship" No change

"Unlicensed assistive personnel" or "UAP" No change

“Verified application” No change

Table 1. Time-frames

Time-frames (in days)

Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Nursing Program Proposal Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Provisional Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Full Approval or Re-approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-208, R4-19-210	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Change	A.R.S. § 32-1606(B)(1); R4-19-209	150	Not applicable	60	180	90	Not applicable	120
Refresher Program Approval or Re-approval	A.R.S. § 32-1606(B)(21); R4-19-216	150	Not applicable	60	180	90	No applicable	120
CNS or RNP Nursing Program Approval or Re-approval	A.R.S. §§ 32 1606(B)(18), 32-1644; R4-19-503	150	Not applicable	60	180	90	Not applicable	120
Credential Evaluation Service Approval or Re-approval	A.R.S. §§ 32-1634.01(A)(1), 32-1634.02(A)(1), 32-1639.01(1), 32-1639.02(1); R4-19-303	~~150~~ 90	Not applicable	~~60~~ 30	180	~~90~~ 60	Not applicable	120
Licensure by Exam	A.R.S. §§ 32-1606(B)(5), 32-1633, 32-1638, and R4-19-301	150	270	30	270	120	240	150
Licensure by Endorsement	A.R.S. §§ 32-1606(B)(5), 32-1634, 32-1639, and R4-19-302	150	270	30	270	120	240	150
Temporary License or Renewal	A.R.S. §§ 32-1605.01(B)(3), 32-1635, 32-1640; R4-19-304	60	90	30	60	30	60	90
License Renewal	A.R.S. §§ 32-1606(B)(5), 32-1642; R4-19-305	120	270	30	270	90	240	150
School Nurse Certification or Renewal	A.R.S. §§ 32-1606 (B)(13), 32-1643 (A)(8); R4-19-309	150	270	30	270	120	240	150
Re-issuance or Subsequent Issuance of License	A.R.S. § 32-1664(O); R4-19-404	150	270	30	270	120	240	150
Registered Nurse Practitioner Certification or Renewal	A.R.S. §§ 32-1601(19), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150

Time-frames (in days)

Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
RNP Prescribing and Dispensing Privilege	A.R.S. § 32-1601(19); R4-19-511	150	270	30	270	120	240	150
CNS Certification or Renewal	A.R.S. §§ 32-1601(6), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
CRNA Certification or Renewal	A.R.S. § 32-1634-.03; R4-19-505; R4-19-506	150	270	30	270	120	240	150
Temporary RNP, CRNA or CNS Certificate or Renewal	A.R.S. § 32-1635.01, 32-1634.03; R4-19-507	60	Not applicable	30	60	30	Not applicable	60
Nursing Assistant and Medication Assistant Training Programs Approval or Re-approval	A.R.S. § 32-1606(B)(11), 32-1650.01; R4-19-803, R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Licensed or Certified Nursing Assistant and Medication Assistant Certification by Examination	A.R.S. §§ 32-1606(B)(11), 32-1647, 32-1650.02, 32-1650.03; R4-19-806	150	270	30	270	120	240	150
Licensed or Certified Nursing Assistant and Medication Assistant Certification by Endorsement	A.R.S §§ 32-1606(B)(11), 32-1648, 32-1650.04; R4-19-807	150	270	30	270	120	240	150
~~Temporary CNA or CMA Certificate or Renewal~~	~~A.R.S. §§ 32-1646(A)(5), 32-1650, R4-19-808~~	~~60~~	~~Not applicable~~	~~30~~	~~60~~	~~30~~	~~Not applicable~~	~~60~~
Licensed or Certified Nursing Assistant and Certified Medication Assistant ~~Certificate~~ Renewal	A.R.S. § 32-1606(B)(11); R4-19-809	120	270	30	270	90	240	150

Time-frames (in days)

Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Re-issuance or Subsequent Issuance of a Nursing Assistant ~~Certificate~~ License	A.R.S. § 32-1664(O); R4-19-815	150	270	30	270	120	240	150

ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

R4-19-201. Organization and Administration

A. No Change

B. No Change

C. No Change

D. No Change

E. No Change

F. A nursing program shall have a written agreement between the program and each clinical agency where clinical experience is provided to the program's students. ~~that:~~

1. ~~Defines the rights and responsibilities of both the clinical agency and the nursing program,~~
2. ~~Lists the role and authority of the governing bodies of both the clinical agency and the nursing program,~~
3. ~~Allows faculty members of the program the right to participate in selecting learning experiences for students, and~~
4. ~~Contains a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement.~~

G. No Change.

H. No Change

I. No Change

1. No Change

2. No Change;

3. No Change

4. No Change

5. No Change

6. No Change

7. No Change:

a. No Change

b. No Change

c. No Change

8. No Change

9. No Change

10. No Change

a. No Change;

b. No Change

c. No Change

d. No Change.

J. No Change

K. No Change

L. No Change

1. No Change
2. No Change

M. No Change

N. No Change

R4-19-205. Students; Policies and Admissions

A. The number of students admitted to a nursing program shall be determined by the number of qualified faculty, the size, number and availability of educational facilities and resources, and the availability of the appropriate clinical learning experiences for students. ~~The number of students admitted shall not exceed the number for which the program was approved plus minor increases allowed under R4-19-209 without Board approval.~~

B. No Change

C. No Change.

D. No Change

E. No Change

1. No Change
2. No Change
3. No Change
4. No Change
5. No Change

F. No Change.

R4-19-207. New Programs; Proposal Approval; Provisional Approval

A. No Change

1. No Change
2. No Change
3. No Change

a. No Change

b No Change

c. No Change

d. No Change

e. No Change

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n. No Change:

i. No Change

ii. No Change

iii. No Change

B. No Change.

C. No Change

D. No change

1. No Change

2. No Change

3. No Change

a. No Change;

b. No Change

c. No Change;

5. No Change;

6. Final program implementation plan including dates and number of planned student admissions ~~not to exceed 60 per calendar year~~, recruitment and hire dates for didactic and clinical faculty for the period of provisional approval~~. An increase in student admissions may be sought under subsection (H) of this Section;~~

7. No Change

8. No Change

a. No Change

b. No Change

c. No Change

E. No Change

F. No Change

G. No Change:

1. No Change

2. No Change

H. Following receipt of the report, a representative of the Board shall conduct a site survey visit under A.R.S. § 41-1009 to determine compliance with this Article. A report of the site visit shall be provided to the Board. ~~After reviewing the consultant report and at the request of the program under R4-19-209, the Board may grant permission to increase admissions.~~

I. No Change

J. ~~A nursing program or the parent institution or governing body of a nursing program under provisional approval may not admit additional students other than those specifically provided for in the application or subsequently approved by the Board under subsection (H) of this Section and R4-19-209 and may not expand to another geographical location.~~

~~K.~~ J. A nursing program whose provisional approval is rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding the provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

R4-19-209. Nursing Program Change

A. The program administrator shall ensure that the following changes to a nursing education program are evidence-based and supported by rationale. A nursing program administrator shall receive approval from the Board before implementing any of the following nursing program changes:

1. Substantive change in the mission or goals of the program that requires revision of curriculum or program delivery method;

2. Increasing or decreasing the academic credits or units of the program excluding pre-requisite credits;

3. Adding a geographical location of the program;

4. ~~Increasing the student admission capacity annually by more than 30 students;~~

~~5~~ 4. Changing the level of educational preparation provided;

~~6~~ 5. Transferring the nursing program from one institution to another; or

~~7~~ 6. Establishing different admission, progression or graduation requirements for specific cohorts of the program.

B. No Change

1. No Change

2. No Change

3. No Change

4. No Change

C. No Change

R4-19-216. Approval of a Refresher Program

A. No change

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

B. No change

1. No change

    a. No change

    b. No change

    c. No change

    d. No change

    e. No change

    f. No change

    g. No change

    h. No change

    i. No change

    j. No change

    k. No change

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    c. No change

    d. No change

    e. No change

3. No change

    a. No change

    b. No change

c. No change

d. No change

C. No Change

1. No change

a. No change

b. No change

2. No change

a. No change

b. No change

3. No change

4. No change

5. No change

D. Program types; bonding

1. A refresher program may be offered by:

a. ~~A private educational institution that is accredited by the private post-secondary board,~~ An educational institution licensed by the State Board for Private Postsecondary Education;

b. ~~A public post-secondary educational institution,~~ A public post-secondary educational institution;

c. ~~A licensed health care institution,~~ A health care institution licensed by the Arizona Department of Health Services or a health care institution authorized by the Centers for Medicare & Medicaid Services; or

d. A private ~~individual, partnership or corporation~~ business that meets the requirements of this Section and all other legal requirements to operate a business in Arizona;

e. A program funded by a local, state or federal governmental agency, such as a program within a technical school or school of nursing.

2. If the refresher program is offered by a private ~~individual, partnership or corporation,~~ business, the program shall meet the following requirements:

e. ~~Submit proof of insurance covering any potential or future claims for damages resulting from any aspect of the program or provide evidence of a surety bond from a surety~~ Hold a minimum of $15,000 of insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a rating of ~~"A"~~ "A minus" or better by either Best's Credit Ratings, Moody's Investors Service, or Standard and Poor's rating service. The program shall ensure that:

i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;

ii. The amount of the bond or insurance coverage is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and

iii. The bond or insurance is maintained for an additional 24 months after program closure.

f. For programs offering on-ground instruction, provide a fire inspection report of the classroom and building by the Arizona State Fire Marshal or an entity approved by the Arizona State Fire Marshal for each program location.

g. ~~Subsection (D) is effective immediately for new programs and within one year of the effective date for approved programs.~~

E. No change

F. No change

G. No change

1. No change

2. No change

3. No change

H. No change

I. No change

1. No change

2. No change

3. No change

4. No change

J. No change

ARTICLE 3. LICENSURE

R4-19-301. Licensure by Examination

A. An applicant for licensure by examination shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:

a. No change

b. Mailing address, including declared primary state of residence, e-mail address, and telephone number;

c. No change

d. Ethnic category~~,~~ and marital status ~~and e-mail address~~, at the applicant's discretion;

e. No change

f. No change

g. No change

h. No change

i. No change

j. No change

k. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change;

vii. No change

l. No change

m. No change

2. No change

3. No change

4. No change

B. No change

1. No change

a. No change

b. No change

2. No change

a. No change

b. No change

C. No change

1. No change

    a. No change

    b. No change

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    a. No change

    b. No change

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    f. No change

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D. No change

1. No change

2. No change

3. No change

E. No change

1. No change

2. No change

3. No change

F. No change

G. No change

1. No change

2. No change

3. No change

R4-19-305. License Renewal

A. An applicant for renewal of a registered or practical nursing license shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:

a. Full legal name, mailing address, e-mail address, telephone number and declared primary state of residence;

b. No change

c. Marital status~~,~~ and ethnic category ~~and e-mail address~~, at the applicant's discretion;

d. No change

i. No change

ii. No change

iii. No change

iv. No change

e. No change

i. No change

ii. No change

iii. No change

iv. No change

v. No change

vi. No change

vii. No change.

f. No change

g. No change

h. No change

i. No change

2. No change

3. No change

B. No change

C. No change

D. No change

E. No change

R4-19-312. Practice Requirement

A. No change

B. An applicant for licensure by endorsement or renewal shall either have completed a post-licensure nursing program or ~~practice~~ practiced nursing at the applicable level of licensure for a minimum of 960 hours in the five years before the date on which the application is received. This requirement is satisfied if the applicant verifies that the applicant has:

1. No change

2. No change

a. No change

b. No change

c. No change

C. No Change

D. An applicant for licensure by either examination or endorsement, ~~who is a graduate of a nursing program located in the U.S. or its territories and~~ who does not meet the requirements of subsection (B), shall have completed the clinical portion of a pre-licensure nursing program within two years of the date of licensure. ~~Examination applicants who were previously licensed in an international jurisdiction shall meet the applicable requirements of subsection (B) or (E).~~

E. No Change

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

A. No change

1. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
4. No change

a. No change

b. No change

5. No change

B. No change

C. No change

D. In addition to acts listed under R4-19-403, for a nurse who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:

1. Prescribing a controlled substance to oneself, ~~or~~ a member of the nurse's family or any other person with whom the nurse has a relationship that may affect the nurse's ability to use independent, objective and sound nursing judgment when prescribing;

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

F. No change

G. No change

H. No change

ARTICLE 8. CERTIFIED AND LICENSED NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS

R4-19-801. Common Standards for Certified Nursing Assistant (CNA) and Certified Medication Assistant (CMA) Training Programs

A. Program Administrative Responsibilities

1. No Change
2. No Change
3. No Change
4. A training program that uses external clinical facilities shall execute a written agreement with each external clinical facility. ~~that:~~
   a. ~~Provides the program instructor the ability to assign patient care experiences to students after consultation with facility staff, and~~
   b. ~~Contains a termination clause that provides sufficient time for enrolled students to complete their clinical training upon termination of the agreement.~~
5. No Change
   a. No Change
   b. No Change
   c. No Change
   d. No Change
6. Before collecting any tuition or fees from a student, a training program shall notify each prospective student of Board requirements for certification and licensure including:
   a. ~~legal~~ Legal presence in the United States; and

b. For licensure, criminal background check requirements, and ineligibility ~~for certification~~ under A.R.S. § 32-1606 (B) (15) and (~~17~~ 16).

7. No Change

8. No Change

9. No Change

10. No Change

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    b. No Change

    c. No Change

    d. No Change

    e. No Change

11. No Change

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    b. No Change

    c. No Change

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B. No Change

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G. No Change

R4-19-802. CNA Program Requirements

A. Organization and Administration

1. No change

a. No change

b. No change,

c. No change

d. A private business that meets the requirements of this Article and all other legal requirements to operate a business in Arizona.

2. If a nursing assistant program is offered by a private business, the program shall meet the following requirements.

a. ~~Hold~~ Hold insurance covering any potential or future claims for damages resulting from any aspect of the program or a hold a surety bond from a surety company with a financial strength rating of "A minus" or better by Best's Credit Ratings, Moody's Investors Service, Standard and Poor's rating service or another comparable rating service as determined by the Board in the amount of a minimum of $15,000. The program shall ensure that:

i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;

ii. The amount of the bond or insurance is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and

iii. The bond or insurance is maintained for an additional 24 months after program closure; and

b. No change

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J. No change

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

for

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLES 1, 2, 3, 5, 8

A. Economic, small business and consumer impact summary:

1. **Identification of the rulemaking:**

   Please see section (B)(1), below. These rules amendments include changes that reduce regulatory burdens on nursing, nursing assistant, and refresher programs, are technical corrections, modernize use of electronic communications, and increase public protection related to prescribing controlled substances

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

      This subsection is not applicable to the rule amendments.

   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:**

      These amendments will reduce regulatory burdens to nursing schools, modernize processing by improving electronic communications, and reduce risk of improper or dangerous prescribing of controlled substances. If the rules are not amended, the burdens on the regulated population and potential risks to the public will remain.

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

      This subsection is not applicable to the rule amendments.

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

R4-19-101 was amended to provide a definition of family and is not expected to have and economic impact.

R4-19-201 and R4-19-801 and may have a modest economic benefit for programs by decreasing costs of negotiating contracts related to Board requirements. These amendments will also decrease administrative burdens on Board staff for ensuring these elements are included in all contracts.

Amendments to R4-19-801 clarify NA an program's responsibility related to felony bar information provided to students.

R4-19-216 was amended to ensure consistency with R4-19-802 and may decrease costs for refresher programs.

R4-19-511 clarifies prohibitions against prescribing controlled substances to family members and others with whom a nurse practitioner may have relationship and is not expected to have an economic impact.

R4-19-301 and R4-19-305, require applicants to furnish an e-mail address consistent with current requirements for advanced practice RNs and CNAs and will allow the Board to efficiently communicate with its licensees regarding renewal dates and other pertinent information related to practice and regulation. With timely notification of more nurses, the Board may experience decreased revenues from late fines, however processing late applications utilizes more Board resources, so overall effects will be negligible. In FY 2014 the Board collected approximately $13,650 in late fees from RN/LPN applicants. Additionally the Board may save in mailing costs to applicants, although most

applicants now voluntarily include their e-mail address, so savings are estimated to be minimal.

R4-19-312 Clarifies that foreign-educated nurses are under the same practice requirements and U.S. Educated nurses and is not expected to have an economic impact

R4-19-802 may have a modest economic benefit for programs by allowing programs a choice of a bond or insurance.

3. **Name and address of agency employees who may be contacted to submit or request additional data on the information included in the economic, small business and consumer impact statement:**

Name:	Emma Mamaluy
	Chief Counsel
	Arizona State Board of Nursing
Address:	4747 N. 7th Street
	Phoenix, Arizona 85014
Telephone:	(602) 771-7844
Fax:	(602) 771-7888
E-mail:	emamaluy@azbn.gov
Website:	www.azbn.gov

B. Economic, small business and consumer impact statement

1. Identification of the proposed rulemaking.

R4-19-101. Definitions

The Board amended this Section to include the definition of “family” as it is used in Chapter 19. This action was identified in the five year rule review of Article 1 which was approved by Council on June 3, 2014. This definition clarifies the persons who would be considered part of the family of either the patient or nurse depending on the context of the rule. This definition will allow the Board to enforce limitations on the prescribing of controlled substances to family members by nurse practitioners (see below R4-19-511).

Table 1. Time-frames

Amendments to this rule are for the purpose of deleting time frames for those licenses the Board no longer issues and reducing time-frames for approval of a CES agency. These changes were identified in a report to the Governor in 2015 regarding EO 2015-01, paragraph 5. Technical changes were also made consistent with statutory changes allowing the board to issue nursing assistant licenses.

R-19-201. Organization and Administration

The Board amended this section to reduce regulatory burdens on schools related to clinical contracts. The Board has enforced these requirements for over a decade, however Board enforcement has neither resulted in increased clinical opportunities for students nor assured that contractual provisions were actually followed such as allowing faculty to determine assignments. While Board staff believes that the presence of a contract is necessary to obtain clinical placement, the details of a clinical contract are best left to the parties, bound by the contract.

Regardless of the contents of any agreement, schools and programs are responsible to obtaining appropriate clinical experiences for each enrolled student.

R4-19-205. Students; Policies and Admissions

R4-19-207. New Programs, Proposal Approval; Provisional Approval;

R4-19-209. Nursing Program Change

References to limitations on program admissions were deleted from these rules because they were rendered obsolete by HB2634 (52nd Legislature, Second Regular Session) which prohibits state agencies from limiting enrollments in any school or program.

R4-19-216. Refresher Programs

The Board amended the language for bonding and fire inspections to be consistent with R4-19-802 which decreased the bond rating from A to A-minus.

R4-19-301. Licensure by Examination

The Board amended this Section to require applicants to provide an e-mail address. This provision would apply to applicants by exam and endorsement because R4-19-303 (Licensure by Endorsement) references this Section. Having an e-mail address allows the Board to communicate with its licensing base with timeliness and efficiency. This will increase communications with licensees and simultaneously decrease costs associated with mailing.

R4-19-305. License Renewal

The Board amended this Section to require renewal applicants to provide an e-mail address. Having a means to efficiently communicate with licensees allows to

Board to inform nurses of renewal, request additional applicant information and provide pertinent information that affects licensure or nursing practice. This will decrease Board costs associated with mailing and may improve licensure time-frames.

R4-19-312. Practice Requirement

The Board amended this Section to allow graduates of international nursing programs to meet the same practice requirement as domestic graduates.

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

The Board amended this Section for the purpose of prohibiting nurse practitioners from prescribing controlled substances to family members, and to prohibit prescribing of controlled substances to any person with whom the nurse has a relationship that could affect the nurse practitioner's judgment when prescribing.

R4-19-801. Common Standards for Certified Nursing Assistants (CNA) and Certified Medication Assistants (CMA)

The Board amended this section to reduce regulatory burdens on schools related to clinical agreements and to correct subsection (A) (6) which relates to the felony bar for CNAs which was rendered obsolete by House Bill 2196 which was adopted by the 52nd Legislature, First Regular Session and signed by the Governor. Regarding clinical agreements, while Board staff believes that the presence of a written agreement is necessary to obtain clinical placement, the details of the agreement are best left to the parties bound by the agreement. Regardless of the contents of any agreement, schools and programs are responsible to obtaining appropriate clinical experiences for each enrolled student.

R4-19-802. CNA Program Requirements

The Board added an option for private businesses who operate CNA programs to hold insurance in lieu of a bond. This is consistent with R4-19-216 which allows an insurance option for refresher program owners.

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

Please see table, below.

3. Analysis of costs and benefits occurring in this state:

Description of Affected Groups	Description of the Effect	Increased Cost/Decreased Revenues	Decreased Costs/Increased Revenue
A. Agency Board of Nursing	Improved electronic communications may reduce administrative and mailing costs, elimination of review of nursing school contracts will reduce administrative costs	None	Minimal
B. Nursing Assistant Programs	Choice of bond or insurance may reduce costs; reduced administrative costs with elimination of clinical contract review	None	Minimal
C. Nursing Regulated	Increased use of email communication may reduce mailing costs.	None	Minimal

Population			
D. Refresher nursing programs	Decreased cost with bond rating reduced to A-	None	Minimal-Moderate
E. Nurse Practitioners with Prescribing Privileges	Clarification of prescribing limitations should not increase costs because the standards of practice already limited this type of prescribing	None	None
F. International Nurses	Standardization of requirements should have no economic impact.	None	None
G. Nursing Programs	Elimination of enrollment limitations may provide economic benefit with increased student enrollment.	None	Moderate

"Minimal" means more than 0 up to and including $10,000

"Moderate" means more than $10,000 up to and including $50,000

"Substantial" means more than $50,000 up to and including $100,0000

"Very Substantial " means more than $100,000.

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

No impact on public or private employment is expected.

5. A statement of the probable impact of the proposed rule making on small businesses:

(a) Identification of the small businesses subject to the rulemaking:

Small businesses owning nursing, nursing assistant, and refresher programs are subject to this rulemaking.

(b) Administrative and other costs required for compliance with the proposed rulemaking:

No additional costs.

(c) Description of the methods that the agency may use to reduce the impact on small businesses:

The Board is allowing A or A- level bonds which may reduce costs.

(d) Probable cost and benefit to private persons and consumers who are directly affected by the rulemaking:

None.

6. Statement of probable effect on state revenues.

None.

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

There is no less intrusive or costly alternative to the rulemaking.

C. Explanation of limitations of the data and the methods that were employed in the attempt to obtain the data and a characterization of the probable impacts

in qualitative terms. The absence of adequate data, if explained in accordance with this subsection, shall not be grounds for a legal challenge to the sufficiency of the economic, small business and consumer impact statement:

None.

Replacement Check List
For rules filed within the
3rd Quarter
July 1- September 30, 2016

THE ARIZONA ADMINISTRATIVE CODE

Within the stated calendar quarter, this Chapter contains all rules made, amended, repealed, renumbered, and recodified; or rules that have expired or were terminated due to an agency being eliminated under sunset law. These rules were either certified by the Governor's Regulatory Review Council or the Attorney General's Office; or exempt from the rulemaking process, and filed with the Office of the Secretary of State. Refer to the historical notes for more information. Please note that some rules you are about to remove may still be in effect after the publication date of this Supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

Title 4. Professions and Occupations

Chapter 19. Board of Nursing

Supplement Release Quarter: 16-3

Sections, Parts, Exhibits, Tables or Appendices modified

Updated A.R.S. citations in R4-19-101, Table 1, R4-19-206, R4-19-304, R4-19-310, R4-19-312, R4-19-401, R4-19-402, R4-19-403, R4-19-505, R4-19-506, R4-19-508, R4-19-509, R4-19-514, R4-19-801, R4-19-814

REMOVE Supp. 16-2	REPLACE with Supp. 16-3
Pages: 1 - 57	Pages: 1 - 58

The Board's contact person who can answer questions about rules in Supp. 16-3:

Board: Board of Nursing
Name: Joey Ridenour, RN, MN, FAAN-Executive Director
Address: 4747 N. 7th Street, Ste. 200
Phoenix, AZ 85014-3655
Telephone: (602) 771-7801
e-mail: jridenour@azbn.gov

Disclaimer: Please be advised the person listed is the contact of record as submitted in the correction letter for this supplement. The contact and other information may have changed and is provided as a public courtesy.

PUBLISHER
Arizona Department of State
Office of the Secretary of State, Public Services Division

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
September 30, 2016

RULES

A.R.S. § 41-1001(17) states: "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules are often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor's notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

This chapter is posted as a public courtesy online, and is for private use only. Those who wish to use the contents for resale or profit should contact the Office about Commercial Use fees. For information on commercial use fees review A.R.S. § 39-121.03 and 1 A.A.C. 1., R1-1-113.

Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

(Authority: A.R.S. § 32-1606 et seq.)

Editor's Note: The Arizona State Board of Nursing amended Sections in this Chapter under an exemption from the provisions of A.R.S. Title 41, Chapter 6 under Laws 2015, Chapter 262 § 22. Exemption from A.R.S. Title 41, Chapter 6 means the Board was not required to submit proposed rules for publication in the Arizona Administrative Register, conduct a public hearing on the rules, or required to submit the rules for approval by the Governor's Regulatory Review Council. Refer to the historical notes for more information (Supp. 16-2).

ARTICLE 1. DEFINITIONS AND TIME-FRAMES

New Article 1, consisting of R4-19-101, adopted effective July 19, 1995 (Supp. 95-3).

Article 1, consisting of R4-19-101 through R4-19-102, repealed effective July 19, 1995 (Supp. 95-3).

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ARTICLE 1. DEFINITIONS AND TIME-FRAMES

R4-19-101. Definitions

"Abuse" means a misuse of power or betrayal of trust, respect, or intimacy by a nurse, nursing assistant, or applicant that causes or is likely to cause physical, mental, emotional, or financial harm to a client.

"Administer" means the direct application of a medication to the body of a patient by a nurse, whether by injection, inhalation, ingestion, or any other means.

"Admission cohort" means a group of students admitted at the same time to the same curriculum in a regulated nursing, nursing assistant, or advanced practice nursing program or entering the first clinical course in a regulated program at the same time. "Same time" means on the same date or within a narrow range of dates pre-defined by the program.

"Applicant" means a person seeking licensure, certification, prescribing, or prescribing and dispensing privileges, or an entity seeking approval or re-approval, if applicable, of a:

CNS or RNP nursing program,
Credential evaluation service,
Nursing assistant training program,
Nursing program,
Nursing program change, or
Refresher program.

"Approved national nursing accrediting agency" means an organization recognized by the United States Department of Education as an accrediting agency for a nursing program.

"Assign" means a nurse designates nursing activities to be performed by another nurse that are consistent with the other nurse's scope of practice.

"Certificate or diploma in practical nursing" means the document awarded to a graduate of an educational program in practical nursing.

"Certified medication assistant" means a certified nursing assistant who meets Board qualifications and is additionally certified by the Board to administer medications under A.R.S. § 32-1650 et. seq.

"CES" means credential evaluation service.

"Client" means a recipient of care and may be an individual, family, group, or community.

"Clinical instruction" means the guidance and supervision provided by a nursing, nursing assistant or medication assistant program faculty member while a student is providing client care.

"CMA" means certified medication assistant.

"CNA" means a certified nursing assistant, as defined in A.R.S § 32-1601(4).

"CNS" means clinical nurse specialist, as defined in A.R.S. § 32-1601(7).

"Collaborate" means to establish a relationship for consultation or referral with one or more licensed physicians on an as-needed basis. Supervision of the activities of a registered nurse practitioner by the collaborating physician is not required.

"Contact hour" means a unit of organized learning, which may be either clinical or didactic and is either 60 minutes in length or is otherwise defined by an accrediting agency recognized by the Board.

"Continuing education activity" means a course of study related to nursing practice that is awarded contact hours by an accrediting agency recognized by the Board, or academic credits in nursing or medicine by a regionally or nationally accredited college or university.

"CRNA" means a certified registered nurse anesthetist as defined in A.R.S. § 32-1601(5).

"DEA" means the federal Drug Enforcement Administration.

"Dispense" means to package, label, and deliver one or more doses of a prescription-only medication in a suitable container for subsequent use by a patient.

"Dual relationship" means a nurse or CNA simultaneously engages in both a professional and nonprofessional relationship with a patient or resident or a patient's or resident's family that is avoidable, non-incidental, and results in the patient or resident or the patient's or resident's family being exploited financially, emotionally, or sexually.

"Eligibility for graduation" means that the applicant has successfully completed all program and institutional requirements for receiving a degree or diploma but is delayed in receiving the degree or diploma due to the graduation schedule of the institution.

"Endorsement" means the procedure for granting an Arizona nursing license to an applicant who is already licensed as a nurse in another state or territory of the United States and has passed an exam as required by A.R.S. §§ 32-1633 or 32-1638 or an Arizona nursing assistant or medication assistant certificate to an applicant who is already listed on a nurse aide register or certified as a medication assistant in another state or territory of the United States.

"Episodic nursing care" means nursing care at nonspecific intervals that is focused on the current needs of the individual.

"Failure to maintain professional boundaries" means any conduct or behavior of a nurse or CNA that, regardless of the nurse's or CNA's intention, is likely to lessen the benefit of care to a patient or resident or a patient's or resident's family or places the patient, resident or the patient's or resident's family at risk of being exploited financially, emotionally, or sexually;

"Full approval" means the status granted by the Board when a nursing program, after graduation of its first class, demonstrates the ability to provide and maintain a program in accordance with the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Good standing" means the license of a nurse, or the certificate of a nursing assistant, is current, and the nurse or nursing assistant is not presently subject to any disciplinary action, consent order, or settlement agreement.

"Independent nursing activities" means nursing care within an RN's scope of practice that does not require authorization from another health professional.

"Initial approval" means the permission, granted by the Board, to an entity to establish a nursing assistant training program, after the Board determines that the program meets the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter.

"Licensure by examination" means the granting of permission to practice nursing based on an individual's passing of a prescribed examination and meeting all other licensure requirements.

"LPN" means licensed practical nurse.

"NCLEX" means the National Council Licensure Examination.

"Nurse" means a licensed practical or registered nurse.

"Nursing diagnosis" means a clinical judgment, based on analysis of comprehensive assessment data, about a client's response to actual and potential health problems or life processes. Nursing diagnosis statements include the actual or potential problem, etiology or risk factors, and defining characteristics, if any.

"Nursing process" means applying problem-solving techniques that require technical and scientific knowledge, good judgment, and decision-making skills to assess, plan, implement, and evaluate a plan of care.

"Nursing program" means a formal course of instruction designed to prepare its graduates for licensure as registered or practical nurses.

"Nursing program administrator" means a nurse educator who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter and has the administrative responsibility and authority for the direction of a nursing program.

"Nursing program faculty member" means an individual working full or part time within a nursing program who is responsible for either developing, implementing, teaching, evaluating, or updating nursing knowledge, clinical skills, or curricula.

"Nursing-related activities or duties" means client care tasks for which education is provided by a basic nursing assistant training program.

"P & D" means prescribing and dispensing.

"Parent institution" means the educational institution in which a nursing program, nursing assistant training program or medication assistant program is conducted.

"Patient" means an individual recipient of care.

"Pharmacology" means the science that deals with the study of drugs.

"Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 11, 13, 14, 17, or 29, or by a state medical board in the United States.

"Preceptor" means a licensed nurse or other health professional who meets the requirements of A.R.S. Title 32, Chapter 15 and this Chapter who instructs, supervises and evaluates a licensee, clinical nurse specialist, nurse practitioner or pre-licensure nursing student, for a defined period.

"Preceptorship" means a clinical learning experience by which a learner enrolled in a nursing program, nurse refresher program, clinical nurse specialist, or registered nurse practitioner program or as part of a Board order provides nursing care while assigned to a health professional who holds a license or certificate equivalent to or higher than the level of the learner's program or in the case of a nurse under Board order, meets the qualifications in the Board order.

"Prescribe" means to order a medication, medical device, or appliance for use by a patient.

"Private business" means any individual or sole proprietorship, partnership, limited liability partnership, limited liability company, corporation or other legal business entity.

"Proposal approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to proceed with an application for provisional approval to establish a pre-licensure nursing program in Arizona.

"Provisional approval" means that an institution has met the standards provided by A.R.S. Title 32, Chapter 15 and this Chapter to implement a pre-licensure nursing program in Arizona.

"Refresher program" means a formal course of instruction designed to provide a review and update of nursing theory and practice.

"Register" means a listing of Arizona certified nursing assistants maintained by the Board that includes the following about each nursing assistant:

Identifying demographic information;
Date placed on the register;
Date of initial and most recent certification, if applicable; and
Status of the nursing assistant certificate, including findings of abuse, neglect, or misappropriation of property made by the Arizona Department of Health Services, sanctions imposed by the United States Department of Health and Human Services, and disciplinary actions by the Board.

"Resident" means a patient who receives care in a long-term care facility or other residential setting.

"RN" means registered nurse.

"RNP" means a registered nurse practitioner as defined in A.R.S. § 32-1601(20).

"SBTPE" means the State Board Test Pool Examination.

"School nurse" means a registered nurse who is certified under R4-19-309.

"Secure examination" means a written test given to an examinee that:

Is administered under conditions designed to prevent cheating;
Is taken by an individual examinee without access to aides, textbooks, other students or any other material that could influence the examinee's score; and,
After opportunity for examinee review, is either never used again or stored such that only designated employees of the educational institution are permitted to access the test.

"Self-study" means a written self-evaluation conducted by a nursing program to assess the compliance of the program with the standards listed in Article 2.

"Standards related to scope of practice" means the expected actions of any nurse who holds the identified level of licensure.

"Substance use disorder" means misuse, dependence or addiction to alcohol, illegal drugs or other substances.

"Supervision" means the direction and periodic consultation provided to an individual to whom a nursing task or patient care activity is delegated.

"Unlicensed assistive personnel" or "UAP" means a CNA or any other unlicensed person, regardless of title, to whom nursing tasks are delegated.

"Verified application" means an affidavit signed by the applicant attesting to the truthfulness and completeness of the application and includes an oath that applicant will conform to ethical professional standards and obey the laws and rules of the Board.

Historical Note

Former Glossary of Terms; Amended effective Nov. 17, 1978 (Supp. 78-6). Former Section R4-19-01 repealed, new Section R4-19-01 adopted effective February 20, 1980 (Supp. 80-1). Amended paragraphs (1) and (7), added paragraphs (9) through (25) effective July 16, 1984 (Supp. 84-4). Former Section R4-19-01 renumbered as Section R4-19-101 (Supp. 86-1). Amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 22, 1995 (Supp. 95-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in the definitions of "CNA" "CNS" and "RNP" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). A.R.S. section references updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-102. Time-frames for Licensure, Certification, or Approval

A. In this Section:

1. "Administrative completeness" or "administratively complete" means Board receipt of all application components required by statute or rule and necessary to begin the substantive review time-frame.
2. "Application packet" means an application form provided by the Board and the documentation necessary to establish an applicant's qualifications for licensure, certification, or approval.
3. "Comprehensive written request for additional information" means written communication after the administrative completeness time-frame by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents is needed before the Board can grant the license. The written communication shall:
   a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license, and
   b. Inform the applicant that the request suspends the running of days within the time-frame, and
   c. Be effective on the date of issuance which is:
      i. The date of its postmark, if mailed;
      ii. The date of delivery, if delivered in person by a Board employee or agent; or
      iii. The date of delivery to the electronic address if delivered electronically.
4. "Deficiency notice" means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant that additional information, including missing documents, is needed to complete the application. The written communication shall:
   a. Contain a list of information required by statute or rule and necessary to complete the application or grant the license;
   b. Inform the applicant that the request suspends the running of days within the time-frame; and
   c. Be effective on the date of issuance which is:
      i. The date of its postmark, if mailed;
      ii. The date of delivery, if delivered in person by a Board employee or agent; or
      iii. The date of delivery to the electronic address if delivered electronically.
5. "Notice of administrative completeness" means written communication by the Board to an applicant in person or at the mailing or electronic address identified on the application notifying the applicant the application contains all information required by statute or rule to complete the application.
6. "Overall time-frame" has the same meaning as A.R.S. § 41-1072(2).
7. "Substantive review time-frame" has the same meaning as A.R.S. § 41-1072(3).

B. In computing the time-frames in this Section, the day of the act or event from which the designated period begins to run is not included. The last day of the period is included unless it is a Saturday, Sunday, or official state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or official state holiday.

C. For each type of licensure, certification, or approval issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1. An applicant may submit a written request to the Board for an extension of time in which to provide a complete application. The request for an extension of time shall be submitted to the Board office before the deadline for submission of a complete application and shall state the reason that the applicant is unable to comply with the time-frame requirements in Table 1 and the amount of additional time requested. The Board may grant an extension of time based on whether the Executive Director of the Board finds that the applicant is unable to comply within the time-frame due to circumstances beyond the applicant's control and that the additional information can reasonably be supplied during the extension of time.

D. For each type of licensure, certification, or approval issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins to run when the Board receives an application packet.

1. If the application packet is not administratively complete, the Board shall send a deficiency notice to the applicant. The time for the applicant to respond to a deficiency notice begins to run on the date the deficiency notice is issued.
   a. The deficiency notice shall list each deficiency.
   b. The applicant shall submit to the Board the missing information listed in the deficiency notice within the period specified in Table 1 for responding to a deficiency notice. The time-frame for the Board to complete the administrative review is suspended until the Board receives the missing information.
   c. If an applicant fails to provide the missing information listed in the deficiency notice within the period specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S.

mail and electronically, if an electronic address is included in the application.

d. If the applicant is the subject of an investigation, the Board may continue to process the application. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.

2. If the application packet is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
3. If the Board issues a license, certificate, or approval during the administrative completeness review time-frame, the Board shall not send a separate written notice of administrative completeness.

E. For each type of licensure, certification, or approval issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins to run on the date the notice of administrative completeness is issued.

1. During the substantive review time-frame, an applicant may make a request to withdraw an application packet. The Board may deny the request to withdraw an application packet if the applicant is the subject of an investigation, based on information gathered during the investigation.
2. If an applicant discloses or the Board receives allegations of unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter, the Board shall review the allegations and may investigate the applicant. The Board may require the applicant to provide additional information as prescribed in subsection (E)(3) based on its assessment of whether the conduct is or might be harmful or dangerous to the health of a client or the public.
3. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. The applicant shall submit the additional information within the period specified in Table 1. The time-frame for the Board to complete the substantive review of the application packet is suspended from the date the comprehensive written request for additional information is issued until the Board receives the additional information.
4. If the applicant fails to provide the additional information identified in the comprehensive written request for additional information within the time specified in Table 1, the Board shall close the applicant's file and send a notice to the applicant by U.S. mail and electronically, if an electronic address is included in the application. The Board may continue to process the application if the applicant is the subject of an investigation. Failure of the applicant to supply the requested information may result in denial of the license or certificate based on information gathered during the investigation.
5. The Board shall grant licensure, conditional licensure, limited licensure, certification, or approval to an applicant:
   a. Who meets the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; and
   b. Whose licensure, certification, or approval is in the best interest of the public.
6. The Board shall deny licensure, certification, or approval to an applicant:
   a. Who fails to meet the substantive criteria for licensure, certification, or approval required by A.R.S. Title 32, Chapter 15 and this Chapter; or
   b. Who has engaged in unprofessional conduct as described in A.R.S. § 32-1601 or this Chapter; and
   c. Whose licensure, certification, or approval is not in the best interest of the public.
7. The Board's written order of denial shall meet the requirements of A.R.S. § 41-1076. The applicant may request a hearing by filing a written request with the Board within 30 days of receipt of the Board's order of denial. The Board shall conduct hearings in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-02 renumbered and amended as Section R4-19-102 effective February 21, 1986 (Supp. 86-1). Section repealed effective July 19, 1995 (Supp. 95-3). New Section adopted April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

Table 1. Time-frames

Time-frames (in days)								
Type of License, Certificate, or Approval	Applicable Statute and Section	Board Overall Time-frame Without Investigation	Board Overall Time-frame With Investigation	Board Administrative Completeness Review Time-frame	Applicant Time to Respond to Deficiency Notice	Board Substantive Review Time-frame Without Investigation	Board Substantive Review Time-frame With Investigation	Applicant Time to Respond to Comprehensive Written Request
Nursing Program Proposal Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Provisional Approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-207	150	Not applicable	60	180	90	Not applicable	120

Nursing Program Full Approval or Re-approval	A.R.S. §§ 32-1606(B)(2), 32-1644; R4-19-208, R4-19-210	150	Not applicable	60	180	90	Not applicable	120
Nursing Program Change	A.R.S. § 32-1606(B)(1); R4-19-209	150	Not applicable	60	180	90	Not applicable	120
Refresher Program Approval or Re-approval	A.R.S. § 32-1606(B)(22); R4-19-216	150	Not applicable	60	180	90	No applicable	120
CNS or RNP Nursing Program Approval or Re-approval	A.R.S. §§ 32 1606(B)(18), 32-1644; R4-19-503	150	Not applicable	60	180	90	Not applicable	120
Credential Evaluation Service Approval or Re-approval	A.R.S. §§ 32-1634.01(A)(1), 32-1634.02(A)(1), 32-1639.01(1), 32-1639.02(1); R4-19-303	150	Not applicable	60	180	90	Not applicable	120
Licensure by Exam	A.R.S. §§ 32-1606(B)(5), 32-1633, 32-1638, and R4-19-301	150	270	30	270	120	240	150
Licensure by Endorsement	A.R.S. §§ 32-1606(B)(5), 32-1634, 32-1639, and R4-19-302	150	270	30	270	120	240	150
Temporary License or Renewal	A.R.S. §§ 32-1605.01(B)(3), 32-1635, 32-1640; R4-19-304	60	90	30	60	30	60	90
License Renewal	A.R.S. §§ 32-1606(B)(5), 32-1642; R4-19-305	120	270	30	270	90	240	150
School Nurse Certification or Renewal	A.R.S. §§ 32-1606(B)(13), 32-1643(A)(8); R4-19-309	150	270	30	270	120	240	150
Re-issuance or Subsequent Issuance of License	A.R.S. § 32-1664(O); R4-19-404	150	270	30	270	120	240	150
Registered Nurse Practitioner Certification or Renewal	A.R.S. §§ 32-1601(20), 32-1606(B)(20); R4-19-505, R4-19-506	150	270	30	270	120	240	150
RNP Prescribing and Dispensing Privilege	A.R.S. § 32-1601(20); R4-19-511	150	270	30	270	120	240	150

CNS Certification or Renewal	A.R.S. §§ 32-1601(7), 32-1606(B)(21); R4-19-505, R4-19-506	150	270	30	270	120	240	150
CRNA Certification or Renewal	A.R.S. § 32-1634.03; R4-19-505, R4-19-506	150	270	30	270	120	240	150
Temporary RNP, CRNA or CNS Certificate or Renewal	A.R.S. §§ 32-1635.01, 32-1634.03; R4-19-507	60	Not applicable	30	60	30	Not applicable	60
Nursing Assistant and Medication Assistant Training Programs Approval or Re-approval	A.R.S. §§ 32-1606(B)(11), 32-1650.01; R4-19-801, R4-19-802, R4-19-803, R4-19-804	120	Not applicable	30	180	90	Not applicable	120
Nursing Assistant and Medication Assistant Certification by Examination	A.R.S. §§ 3 2-1606(B)(11), 32-1647, 32-1650.02, 32-1650.03; R4-19-806	150	270	30	270	120	240	150
Nursing Assistant and Medication Assistant Certification by Endorsement	A.R.S §§ 32-1606(B)(11), 32-1648, 32-1650.04; R4-19-807	150	270	30	270	120	240	150
Temporary CNA or CMA Certificate or Renewal	A.R.S. §§ 32-1646(A)(5), 32-1650; R4-19-808	60	Not applicable	30	60	30	Not applicable	60
Nursing and Medication Assistant Certificate Renewal	A.R.S. § 32-1606(B)(11); R4-19-809	120	270	30	270	90	240	150
Re-issuance or Subsequent Issuance of a Nursing Assistant Certificate	A.R.S. § 32-1664(O); R4-19-815	150	270	30	270	120	240	150

Historical Note

Table 1 adopted effective April 20, 1998 (Supp. 98-2). Amended by final rulemaking at 7 A.A.R. 1712, effective April 4, 2001 (Supp. 01-2). Table 1 amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in column two of "Registered Nurse Practitioner Certification or Renewal," "RNP Prescribing and Dispensing Privilege," and "CNS Certification or Renewal" have been updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308 effective July 6, 2013 (Supp. 13-2). A.R.S. Section and Chapter Section references updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

ARTICLE 2. ARIZONA REGISTERED AND PRACTICAL NURSING PROGRAMS; REFRESHER PROGRAMS

R4-19-201. Organization and Administration

A. The parent institution of a nursing program shall be accredited as a post-secondary institution, college, or university, by an accrediting body that is recognized as an accrediting body by the U.S. Department of Education, and shall hold Arizona private post-secondary approval status if applicable. The parent institution shall submit evidence to the board of continuing accreditation after each reaccreditation review or action. If the

parent institution holds both secondary and post-secondary accreditation, it shall operate any RN or PN program under its post-secondary accreditation.

B. A nursing program shall have a written statement of mission and goals consistent with those of the parent institution and compatible with current concepts in nursing education and practice appropriate for the type of nursing program offered.

C. A nursing program shall be an integral part of the parent institution and shall have at a minimum equivalent status with other academic units of the parent institution.

D. The parent institution shall center the administrative control of the nursing program in the nursing program administrator and shall provide the support and resources necessary to meet the requirements of R4-19-203 and R4-19-204.

E. A nursing program shall provide an organizational chart that identifies the actual relationships, lines of authority, and channels of communication within the program, and between the program and the parent institution.

F. A nursing program shall have a written agreement between the program and each clinical agency where clinical experience is provided to the program's students that:
1. Defines the rights and responsibilities of both the clinical agency and the nursing program,
2. Lists the role and authority of the governing bodies of both the clinical agency and the nursing program,
3. Allows faculty members of the program the right to participate in selecting learning experiences for students, and
4. Contains a termination clause that provides sufficient time for enrolled students to complete the clinical experience upon termination of the agreement.

G. A nursing program shall implement written policies and procedures that provide a mechanism for student input into the development of academic policies and procedures and allow students to anonymously evaluate faculty, nursing courses, clinical experiences, resources and the overall program.

H. The parent institution shall appoint a sole individual to the full-time position of nursing program administrator. The parent institution shall ensure that the individual appointed meets or exceeds the requirements of, and fulfills the duties specified in, R4-19-203, whether on an interim or permanent basis.

I. A nursing program shall develop and implement a written plan for the systematic evaluation of the total program that is based on program and student learning outcomes and that incorporates continuous improvement based on the evaluative data. The plan shall include measurable outcome criteria, logical methodology, frequency of evaluation, assignment of responsibility, actual outcomes and actions taken. The following areas shall be evaluated:
1. Internal structure of the program, its relationship to the parent institution, and compatibility of program policies and procedures with those of the parent institution;
2. Mission and goals;
3. Curriculum;
4. Education facilities, resources, and student support services;
5. Clinical resources;
6. Student achievement of program educational outcomes;
7. Graduation and attrition for each admission cohort including at a minimum:
   a. Number and percent of students who left the program;
   b. Number and percent of students who are out of sequence in the program; and
   c. Number and percent of students who graduated within 100%, 150% or greater than 150% of time allotted in the curriculum plan.
8. Graduate performance on the licensing examination;
9. Faculty performance; and
10. Protection of patient safety including but not limited to:
    a. Student and faculty policies regarding supervision of students, practicing within scope and student safe practice;
    b. The integration of safety concepts within the curriculum;
    c. The application of safety concepts in the clinical setting; and
    d. Policies made under R4-19-203(C)(6).

J. The parent institution shall provide adequate fiscal, human, physical, and learning resources to support program processes and outcomes necessary for compliance with this Article.

K. The parent institution shall provide adequate resources to recruit, employ, and retain sufficient numbers of qualified faculty members to meet program and student learning outcomes and the requirements of this Article.

L. The parent institution shall notify the Board of a vacancy, pending vacancy, or leave of absence greater than 30 days in the position of nursing program administrator within 15 days of the program's awareness of the vacancy, pending vacancy, or leave of absence and do the following:
1. Appoint an interim or permanent administrator who meets the requirements of R4-19-203(A) within 15 days of the effective date of the vacancy or absence, and
2. Notify the Board of the appointment of an interim or permanent administrator within 15 days of appointment and provide a copy of the administrator's credentials to the Board.

M. A parent institution shall notify the Board within 15 days of any change or pending change in institutional accreditation status or reporting requirements.

N. Prior to final approval for new nursing programs and by July 31, 2015 for existing programs, all RN nursing programs offering less than a bachelor’s degree in nursing shall have a minimum of one articulation agreement with a Board approved and nationally accredited baccalaureate or higher nursing program that includes recognition of prior learning in nursing and recognition of foundational courses.

Historical Note

Former Section I, Part I; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-11 repealed, new Section R4-19-11 adopted effective February 20, 1980 (Supp. 80-1). Amended effective July 16, 1984 (Supp. 84-4). Former Section R4-19-11 renumbered as Section R4-19-201 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-202. Resources, Facilities, Services, and Records

A. The parent institution of a nursing program shall consider the size of the program including number of program faculty and number of program students and shall provide and maintain resources, services and facilities for the effective development and implementation of the program that are at a minimum:
1. Equivalent to those provided by approved programs of equivalent size and type, or in the case of no equivalent program, scaled relative to an approved program;
2. Comparable to those provided to other academic units of the parent institution; and
3. Include the following:

a. A private office for the nursing program administrator;
b. Faculty offices that are conveniently located to program classrooms and secretarial support staff;
c. If faculty offices are not private, the parent institution shall provide dedicated space for private faculty-student conferences that is:
i. Conveniently located to faculty offices, and
ii. Available whenever confidential student information is discussed.
d. Space for secretarial support and a secure area for records and files, convenient to the nursing program faculty and administrator;
e. Classrooms, laboratories, and conference rooms of the size and type needed with furnishings and equipment consistent with the educational purposes for which the facilities are used;
f. Acoustics, lighting, ventilation, plumbing, heating and cooling in working order;
g. Dedicated secretarial, laboratory and other support personnel available to meet the needs of the program;
h. Access to a comprehensive, current, and relevant collection of educational materials and learning resources for faculty members and students;
i. Access to supplies and equipment to simulate patient care that are:
i. In working order,
ii. Organized in a manner so that they are readily available to faculty,
iii. Consistent with current clinical practices, and
iv. Of sufficient quantity for the number of students enrolled,
j. Current technology in working order to support teaching and learning. Institutions offering web-enhanced and distance education shall provide ongoing and effective technical, design and production support for faculty members and technical support services for students.

B. A nursing program shall maintain current and accurate records of the following:
1. Student records, including admission materials, courses taken, grades received, scores in any standardized tests taken, health and performance records, and health information submitted to meet program or clinical requirements for a minimum of three years after the fiscal year of program completion for academic records and one year after program completion for health records;
2. Faculty records, including Arizona professional nursing license number, evidence of fulfilling the requirements in R4-19-204, and performance evaluations for faculty employed by the parent institution for one or more years. Records shall be kept current during the period of employment and retained for a minimum of three years after termination of employment;
3. Minutes of faculty and committee meetings for a minimum of three years;
4. Reports from accrediting agencies and the Board for a minimum of 10 years;
5. The statement of mission and goals, and curricular materials consistent with the requirements of R4-19-206 for the current curriculum and, if the current curriculum is less than three years old, the previous curriculum; and
6. Formal program complaints and grievances since the last site review with evidence of due process and resolution.

Historical Note
Former Section I, Part II; Former Section R4-19-12 repealed, new Section R4-19-12 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-12 repealed, new Section R4-19-12 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-12 renumbered as Section R4-19-202 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-203. Administrator; Qualifications and Duties

A. The nursing program administrator shall hold a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and:
1. For registered nursing programs:
a. A graduate degree with a major in nursing;
b. A minimum of three years work experience as a registered nurse providing direct patient care; and
c. If appointed to the position of nursing program administrator on or after the effective date of these rules, have a minimum of one academic year full-time experience teaching in or administering a nursing education program leading to licensure; or
d. If lacking the requirements of subsection (A)(1)(c), the parent institution may appoint an individual to the position of "Interim Program Administrator" under the following conditions:
i. The individual is subject to termination based on performance and any factors determined by the institution;
ii. A direct supervisor evaluates performance periodically over the next 12 months to ensure institutional and program goals are being addressed; and
iii. If evaluations are satisfactory, the individual may be appointed to permanent status after 12 months in the interim position.
2. For practical nursing programs:
a. If appointed prior to the effective date of these rules, a baccalaureate degree with a major in nursing; and
b. If appointed on or after the effective date of these rules, the requirements of subsection (A)(1).

B. The administrator shall have comparable status with other program administrators in the parent institution and shall report directly to an academic officer of the institution.

C. The administrator shall have the authority to direct the program in all its phases, including:
1. Administering the nursing education program;
2. Directing activities related to academic policies, personnel policies, curriculum, resources, facilities, services, and program evaluation;
3. Preparing and administering the budget;
4. Recommending candidates for faculty appointment, retention, and promotion;
5. In addition to any other evaluation used by the parent institution, ensuring that nursing program faculty members are evaluated at a minimum:
a. Annually in the first year of employment and every three years thereafter;
b. Upon receipt of information that a faculty member, in conjunction with performance of their duties, may

be engaged in intentional, negligent or other behavior that either is or might be:
i. Below the standards of the program or the parent institution,
ii. Inconsistent with nursing professional standards, or
iii. Potentially or actually harmful to a patient.
c. By the nurse administrator or a nurse educator designated by the nurse administrator, and
d. In the areas of teaching ability and application of nursing knowledge and skills relative to the teaching assignment.
6. Together with faculty develop, enforce and evaluate equivalent student and faculty policies necessary for safe patient care and to meet clinical agency requirements regarding:
a. Physical and mental health,
b. Criminal background checks,
c. Substance use screens,
d. Functional abilities, and
e. Supervision of clinical activities.
7. Participating in activities that contribute to the governance of the parent institution;
8. Together with faculty develop, enforce and evaluate both student and faculty policies regarding minimal requisite nursing skills and knowledge necessary to provide safe patient care for the type of unit and patient assignment; and
9. Enforcing consistent application of all nursing program policies.

D. The administrator of the nursing program shall not carry a teaching load of more than three clock hours per week if required to teach.

E. The administrator may have administrative responsibilities other than the nursing program, provided that a nursing program faculty member is designated to assist with program management and the administrator is able to fulfill the duties of this Article.

Historical Note

Former Section I, Part III; Former Section R4-19-13 repealed, new Section R4-19-13 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-13 repealed, new Section R4-19-13 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-13 renumbered as Section R4-19-203 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-204. Faculty; Personnel Policies; Qualifications and Duties

A. A nursing program shall implement written personnel policies for didactic and clinical nursing faculty members including workload policies that at minimum conform to those for other faculty members of the parent institution and that are in accordance with accepted nursing educational standards or provide a written explanation of any differences not related to the requirements of this Article.

B. A nursing program shall provide at a minimum the number of qualified faculty members necessary for compliance with the provisions of this Article and comparable to that provided by approved programs of equivalent size and program type, or, in the case of no equivalent program, a number scaled relative to an approved program.

C. The parent institution of a nursing program shall ensure that at least one nursing faculty member is assigned to no more than ten students while students are directly or indirectly involved in the care of patients including precepted experiences.

D. The faculty shall supervise all students in clinical areas in accordance with the acuity of the patient population, clinical objectives, demonstrated competencies of the student, and requirements established by the clinical agency.

E. The parent institution of a nursing program shall ensure that every registered nursing program faculty member holds a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and that every faculty member meets one of the following:
1. If providing didactic instruction:
a. At least two years of experience as a registered nurse providing direct patient care; and
b. A graduate degree. The majority of the faculty members of a registered nursing program shall hold a graduate degree with a major in nursing. If the graduate degree is not in nursing, the faculty member shall hold a minimum of a baccalaureate degree in nursing; or
2. If providing clinical instruction, as defined in R4-19-101, only:
a. The requirements for didactic faculty, or
b. A baccalaureate degree with a major in nursing and at least three years of experience as a registered nurse providing direct patient care.

F. The parent institution of a nursing program shall ensure that each practical nursing program faculty member holds a current Arizona registered nurse license in good standing or multi-state privilege to practice in Arizona under A.R.S., Title 32, Chapter 15 and that every faculty member meets the following:
1. At least two years of experience as a registered nurse providing direct patient care, and
2. A minimum of a baccalaureate degree with a major in nursing.

G. Under the leadership of the nursing program administrator, nursing program faculty members shall:
1. Develop, implement, evaluate, and revise the program of learning including the curriculum and learning outcomes of the program;
2. Develop, implement, evaluate and revise standards for the admission, progression, and graduation of students;
3. Participate in advisement and guidance of students.

H. Together with the nursing program administrator, develop, implement and evaluate written policies for faculty orientation, continuous learning and evaluation.

Historical Note

Former Section I, Part IV; Former Section R4-19-14 repealed, new Section R4-19-14 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-14 repealed, new Section R4-19-14 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-14 renumbered as Section R4-19-204 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at

19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-205. Students; Policies and Admissions

A. The number of students admitted to a nursing program shall be determined by the number of qualified faculty, the size, number and availability of educational facilities and resources, and the availability of the appropriate clinical learning experiences for students. The number of students admitted shall not exceed the number for which the program was approved plus minor increases allowed under R4-19-209 without Board approval.

B. A nursing program shall implement written student admission and progression requirements that are evidence-based, allow for a variety of clinical experiences and satisfy the licensure criteria of A.R.S. Title 32, Chapter 15 and A.A.C. Title 4 Chapter 19.

C. A nursing program shall have and enforce written policies available to students and the public regarding admission, readmission, transfer, advanced placement, progression, graduation, withdrawal, and dismissal.

D. A nursing program and parent institution shall have and enforce written policies that are readily available to students in either the college catalogue or nursing student handbook that address student rights, responsibilities, grievances, health, and safety.

E. A nursing program and parent institution shall provide accurate and complete written information that is readily available to all students and the general public about the program including

1. The nature of the program, including course sequence, prerequisites, co-requisites and academic standards;
2. The length of the program;
3. Total program costs including tuition, fees and all program related expenses;
4. The transferability of credits to other public and private educational institutions in Arizona; and
5. A clear statement regarding any technology based instruction and the technical support provided to students.

F. A nursing program shall communicate changes in policies, procedures and program information clearly to all students, prospective students and the public and provide advance notice similar to the advance notice provided by an approved program of similar size and type.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-15 repealed, new Section R4-19-15 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-15 renumbered as Section R4-19-205 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-206. Curriculum

A. A nursing program shall assign students only to those clinical agencies that provide the experience necessary to meet the established clinical objectives of the course.

B. A nursing program shall provide a written program curriculum to students that includes;

1. Student centered outcomes for the program;
2. A curriculum plan that identifies the prescribed course sequencing and time required;
3. Specific course information that includes:
   a. A course description;
   b. Student centered and measurable didactic objectives;
   c. Student centered and measurable clinical objectives, if applicable;
   d. Student centered and measurable simulation objectives, if applicable;
   e. A course content outline that relates to the course objectives;
   f. Student centered and measurable objectives and a content outline for each unit of instruction.
   g. Graded activities to demonstrate that course objectives have been met.

C. A nursing program administrator and faculty members shall ensure that the curriculum:

1. Reflects the nursing program's mission and goals;
2. Is designed so that the student is able to achieve program objectives within the curriculum plan;
3. Is logically consistent between and within courses and structured in a manner whereby each course builds on previous learning.
4. Incorporates established professional standards, guidelines or competencies; and
5. Is designed so that a student who completes the program will have the knowledge and skills necessary to function in accordance with the definition and scope of practice specified in A.R.S. § 32-1601(17) and R4-19-401 for a practical nurse or A.R.S. § 32-1601(19) and R4-19-402 for a registered nurse.

D. A nursing program shall provide for progressive sequencing of classroom and clinical instruction sufficient to meet the goals of the program and be organized in such a manner to allow the student to form necessary links of theoretical knowledge, clinical reasoning, and practice.

1. A nursing program curriculum shall provide coursework that includes, but is not limited to:
   a. Content in the biological, physical, social, psychological and behavioral sciences to provide a foundation for safe and effective nursing practice consistent with the level of the nursing program;
   b. Content regarding professional responsibilities, legal and ethical issues, history and trends in nursing and health care;
   c. Didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration and maintenance of health in patients across the life span and from diverse cultural, ethnic, social and economic backgrounds to include:
      i. Patient centered care,
      ii. Teamwork and collaboration,
      iii. Evidence-based practice,
      iv. Quality improvement,
      v. Safety, and
      vi. Informatics,
2. A registered nursing program shall provide clinical instruction that includes, at a minimum, selected and guided experiences that develop a student's ability to apply core principles of registered nursing in varied settings when caring for:
   a. Adult and geriatric patients with acute, chronic, and complex, life-threatening, medical and surgical conditions;
   b. Peri-natal patients and families;
   c. Neonates, infants, and children;
   d. Patients with mental, psychological, or psychiatric conditions; and
   e. Patients with wellness needs.

2. A practical nursing program shall provide clinical instruction that includes, at minimum, selected and guided experiences that develop a student's ability to apply core principles of practical nursing when caring for:
   a. Patients with medical and surgical conditions throughout the life span,
   b. Peri-natal patients, and
   c. Neonates, infants, and children in varied settings.

E. A nursing program may provide precepted clinical instruction. Programs offering precepted clinical experiences shall:
1. Develop and adhere to policies that require preceptors to:
   a. Be licensed nurses at or above the level of the program either by holding an Arizona license in good standing, holding multi-state privilege to practice in Arizona under A.R.S. Title 32, Chapter 15, or if practicing in a federal facility, meet requirements of A.R.S. § 32-1631(5);
   b. For LPN preceptors, practice under the general supervision of an RN or physician according to A.R.S. § 32-1601(16).
2. Develop and implement policies that require a faculty member of the program to:
   a. Together with facility personnel, select preceptors that possess clinical expertise sufficient to accomplish the goals of the preceptorship;
   b. Supervise the clinical instruction according to the provisions of R4-19-204(C) and (D), and
   c. Maintain accountability for student education and evaluation.

F. A nursing program may utilize simulation in accordance with the clinical objectives of the course. Unless approved under R4-19-214, a nursing program shall not utilize simulation for an entire clinical experience with any patient population identified in subsection (D) of this Section.

G. A nursing program shall maintain at least a 80% NCLEX® passing rate for graduates taking the NCLEX-PN® or NCLEX-RN® for the first time within 12 months of graduation. The Board shall issue a notice of deficiency to any program that has a NCLEX® passing rate less than 80% for two consecutive calendar years or less than 75% for one calendar year.

H. At least 45% of students enrolled in the first nursing clinical course shall graduate within 100% of the prescribed period. "Prescribed period" means the time required to complete all courses and to graduate on time according to the nursing program's curriculum plan excluding the time to complete program pre-requisite or pre-clinical courses.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-16 repealed, former Section R4-19-17 renumbered and amended as Section R4-19-16 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-16 renumbered as R4-19-206 (Supp. 86-1). Section repealed; new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (B)(3) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). A.R.S. section references updated under subsection (C)(5) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-207. New Programs; Proposal Approval; Provisional Approval

A. At a minimum of one year before establishing a nursing program, a parent institution shall submit to the Board one electronic copy and one paper copy of an application for proposal approval. The parent institution shall ensure that the proposal application was written by or under the direction of a registered nurse who meets the requirements of R4-19-203(A) and includes the following information and documentation:
1. Name and address of the parent institution;
2. Statement of intent to establish a nursing program, including the academic and licensure level of the program; and
3. Proposal that includes, but is not limited to, the following information:
   a. Documentation of the present and future need for the type and level of program in the state including availability of potential students, need for entry level nurses at the educational level of the program and availability of clinical placements that meet the requirements of R4-19-206;
   b. Evidence that written notification of intent to establish a new nursing education program has been provided to the nursing program administrators of all existing Arizona-approved programs a minimum of 30 days prior to submission of the proposal application, including projected student enrollment and clinical sites;
   c. Organizational structure of the educational institution documenting the relationship of the nursing program within the institution and the role of the nursing program administrator consistent with R4-19-201 and R4-19-203;
   d. Evidence of institutional accreditation consistent with R4-19-201 and post-secondary approval, if applicable. The institution shall provide the most recent full reports including findings and recommendations of the applicable accrediting organization or approval agency. The Board may request additional accreditation or approval evidence.
   e. Purpose and mission of the nursing program,
   f. Curriculum development documentation to include:
      i. Student-centered outcomes for the program;
      ii. A plan that identifies the prescribed course sequencing and time required; and
      iii. Identification of established professional standards, guidelines or competencies upon which the curriculum will be based;
   g. Name, qualifications, and job description of a nursing program administrator who meets the requirements of R4-19-203 and availability and job description of faculty who meet qualifications of R4-19-204;
   h. Number of budgeted clinical and didactic faculty positions from the time of the first admission to graduation of the first class;
   i. Evidence that the program has secured clinical sites for its projected enrollment that meet the requirements of R4-19-206;
   j. Anticipated student enrollment per session and annually;
   k. Documentation of planning for adequate academic facilities and secretarial and support staff to support

the nursing program consistent with the requirements of R4-19-202;

l. Evidence of program financial resources comparable to an approved program of similar size and type or, if there is no comparable program, scaled relative to an approved program adequate for the planning, implementation, and continuation of the nursing program; and

m. Tentative time schedule for planning and initiating the nursing program including faculty hiring, entry date and size of student cohorts, and obtaining and utilizing clinical placements from the expected date of proposal approval to graduation of the first cohort.

n. A parent institution or owner corporation that has multiple nursing programs in one or more U.S. jurisdictions including Arizona, shall provide the following evidence for each nursing program:

i. Program approval in good standing with no conditions, restrictions, ongoing investigations or deficiencies;

ii. An NCLEX pass rate of at least 80% for the past two years or since inception; and

iii. An on-time graduation rate consistent with the requirements of R4-19-206(H).

B. The Board shall grant proposal approval to any parent institution that meets the requirements of subsection (A) if the Board deems that such approval is in the best interests of the public. Proposal approval expires one year from the date of Board issuance.

C. A parent institution that is denied proposal approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for proposal approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

D. At a minimum of 180 days before planned enrollment of students, a parent institution that received proposal approval within the previous year may submit to the Board one electronic copy and one paper copy of an application for provisional approval. The parent institution shall ensure that the provisional approval application was written by or under the direction of a registered nurse who meets the requirements of R4-19-203(A) and includes the following information and documentation:

1. Name and address of parent institution;
2. A self-study that provides evidence supporting compliance with R4-19-201 through R4-19-206, and
3. Names and qualifications of:
   a. The nursing program administrator;
   b. Didactic nursing faculty or one or more nurse consultants who are responsible for developing the curriculum and determining nursing program admission, progression and graduation criteria;
4. Plan for recruiting and hiring additional didactic faculty for the first semester or session of operation at least 60 days before classes begin;
5. Plan for recruiting and hiring additional clinical nursing faculty at least 30 days before the clinical rotation begins;
6. Final program implementation plan including dates and number of planned student admissions not to exceed 60 per calendar year, recruitment and hire dates for didactic and clinical faculty for the period of provisional approval. An increase in student admissions may be sought under subsection (H) of this Section;
7. Descriptions of available and proposed physical facilities with dates of availability; and
8. Detailed written plan for clinical placements for all planned enrollments until graduation of the first class that is:
   a. Based on current clinical availability and curriculum needs;
   b. Accompanied by documentation of commitment from proposed clinical agencies for the times and units specified, in addition to a signed clinical contract that meets the requirements of R4-19-201(F) from each agency; and
   c. Lists any nursing programs who are currently using the planned clinical units for the times proposed and will be displaced.

E. Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall grant provisional approval to a parent institution that meets the requirements of R4-19-201 through R4-19-206 if approval is in the best interest of the public. A parent institution that is denied provisional approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

F. The provisional approval of a nursing program expires 12 months from the date of the grant of provisional approval if a class of nursing students is not admitted by the nursing program within that time. The Board may rescind the provisional approval of a nursing program for a violation of any provision of this Article according to R4-19-211.

G. One year after admission of the first nursing class into nursing courses, the program shall provide a report to the Board containing information on:

1. Implementation of the program including any differences from the plans submitted in the applications for proposal and provisional approval and an explanation of those differences; and
2. The outcomes of the evaluation of the program according to the program's evaluation plan under R4-19-201(I);

H. Following receipt of the report, a representative of the Board shall conduct a site survey visit under A.R.S. § 41-1009 to determine compliance with this Article. A report of the site visit shall be provided to the Board. After reviewing the consultant report and at the request of the program under R4-19-209, the Board may grant permission to increase admissions.

I. If a nursing program fails to apply for full approval within two years of graduating its first class of students, the Board shall rescind its provisional approval. A nursing program whose provisional approval is rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding the provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

J. A nursing program or the parent institution or governing body of a nursing program under provisional approval may not admit additional students other than those specifically provided for in the application or subsequently approved by the Board under subsection (H) of this Section and R4-19-209 and may not expand to another geographical location.

K. A nursing program whose provisional approval is rescinded may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding the provisional approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-17 renumbered and amended as Section R4-19-16 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-17 renumbered as R4-19-207 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-208. Full Approval of a New Nursing Program

A. A nursing program seeking full approval shall submit an electronic and one paper copy of an application that includes the following information and documentation:
1. Name and address of the parent institution,
2. Date the nursing program graduated its first class of students, and
3. A self-study report that contains evidence the program is in compliance with R4-19-201 through R4-19-206.

B. Following an onsite evaluation conducted according to A.R.S § 41-1009, the Board shall grant full approval for a maximum of five years or the accreditation period for nationally accredited programs governed by R4-19-213, to a nursing program that meets the requirements of this Article and if approval is in the best interest of the public. A nursing program that is denied full approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-209. Nursing Program Change

A. The program administrator shall ensure that the following changes to a nursing education program are evidence-based and supported by rationale. A nursing program administrator shall receive approval from the Board before implementing any of the following nursing program changes:
1. Substantive change in the mission or goals of the program that requires revision of curriculum or program delivery method;
2. Increasing or decreasing the academic credits or units of the program excluding pre-requisite credits;
3. Adding a geographical location of the program;
4. Increasing the student admission capacity annually by more than 30 students;
5. Changing the level of educational preparation provided;
6. Transferring the nursing program from one institution to another; or
7. Establishing different admission, progression or graduation requirements for specific cohorts of the program.

B. The administrator shall submit one electronic and one paper copy of the following materials with the request for nursing program changes:
1. The rationale for the proposed change and the anticipated effect on the program administrator, faculty, students, resources, and facilities;
2. A summary of the differences between the current practice and proposed change;
3. A timetable for implementation of the change; and
4. The methods of evaluation to be used to determine the effect of the change.

C. The Board shall approve a request for a nursing program change if the program demonstrates that it has the resources to implement the change and the change is evidence-based and consistent with R4-19-201through R4-19-206. A nursing program that is denied approval of program changes may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for full approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-210. Renewal of Approval of Nursing Programs Not Accredited by a National Nursing Accrediting Agency

A. An approved nursing program that is not accredited by an approved national nursing accrediting agency shall submit an application packet to the Board at least four months before the expiration of the current approval that includes the following:
1. Name and address of the parent institution,
2. Evidence of current institutional accreditation status under R4-19-201,
3. Copy or on-line access to:
   a. A current catalog of the parent institution,
   b. Current nursing program and institutional student and academic policies, and
   c. Institutional and nursing program faculty policies and job descriptions for nursing program faculty, and
4. One electronic copy and one paper copy of a self-study report that contains evidence of compliance with R4-19-201 through R4-19-206.

B. Following an onsite evaluation conducted according to A.R.S. § 41-1009, the Board shall renew program approval for a maximum of five years if the nursing program meets the criteria in R4-19-201 through R4-19-206 and if renewal is in the best interest of the public. The Board shall determine the term of approval that is in the best interest of the public.

C. If the Board denies renewal of approval, the nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-211. Unprofessional Conduct

A disciplinary action, denial of approval, or notice of deficiency may be issued against a nursing or refresher program for any of the following acts of unprofessional conduct in a nursing program:
1. Failure to maintain minimum standards of acceptable and prevailing educational or nursing practice;

2. Deficiencies in compliance with the provisions of this Article;
3. Utilization of students to meet staffing needs in health care facilities;
4. Non-compliance with the program's or parent institution's mission or goals, program design, objectives, or policies;
5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
6. Student enrollments without necessary faculty, facilities, or clinical experiences;
7. Ongoing or repetitive employment of unqualified faculty or program administrator;
8. Failure to comply with Board requirements within designated time-frames;
9. Fraud or deceit in advertising, promoting or implementing the program;
10. Material misrepresentation of fact by a nursing or refresher program in any advertisement, application or information submitted to the Board;
11. Failure to allow Board staff to visit the program or conduct an investigation including failure to supply requested documents; or
12. Any other evidence that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety and well-being of students, faculty, patients or potential patients.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-211 renumbered to R4-19-212; New Section R4-19-211 made by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-212. Notice of Deficiency

A. Under A.R.S. § 32-1644(D), when surveying or re-surveying a nursing program, the Board shall, upon initially determining that a nursing program is not in compliance with applicable provisions of this Article provide to the nursing program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies not to exceed 18 months.
1. The administrator shall, within 30 days from the date of service of the notice of deficiencies, file a plan to correct each of the identified deficiencies after consultation with the Board or designated Board representative.
2. The administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
3. If the Board's determination is not appealed or is upheld upon appeal, the Board shall conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.

B. The Board shall, following a determination of continued noncompliance, rescind the approval of, or restrict admissions to a nursing program if the program fails to comply with Article 2 within the time set by the Board in the notice of deficiencies served upon the program.
1. The Board shall serve the administrator with a written notice of proposed rescission of approval or restriction of admissions that states the grounds for the proposed action. The administrator shall have 30 days to submit a written request for a hearing to appeal the Board's proposed action. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
2. Upon the effective date of a decision to rescind program approval, the nursing program shall immediately cease operation and be removed from the official approved-status listing. A nursing program that has been ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.

C. In addition to the cause in subsection (B), the Board may, depending on the severity and pattern of violations, issue discipline, rescind approval of or restrict admissions to a nursing program for any of the following causes:
1. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
2. Failure to comply with orders of or stipulations with the Board within the time determined by the Board; or
3. Unprofessional program conduct under R4-19-211.

D. A parent institution that voluntarily terminates a nursing education program while under a Board action, including a Notice of Deficiency, shall not apply to open a new nursing education program for a period of two years and shall provide evidence in any future application that the basis for the Board action has been rectified.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-212 renumbered to R4-19-213; New Section R4-19-212 renumbered from R4-19-211 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-213. Nursing Programs Holding National Program Accreditation

A. An approved nursing program that is accredited by an approved national nursing accrediting agency shall submit to the Board evidence of initial accreditation including a copy of the site visit report and the official notice of accreditation.

B. A nationally accredited nursing program or a program seeking national accreditation or re-accreditation shall inform the Board at least 30 days in advance of any pending visit by a nursing program accrediting agency and allow Board staff to attend all portions of the visit.

C. Following any visit by the accrediting agency, a nursing program shall submit a complete copy of all site visit reports to the Board within 15 days of receipt by the program and notify the Board within 15 days of any change or pending change in program accreditation status or reporting requirements.

D. The administrator of a nursing program that loses its accreditation status or allows its accreditation status to lapse shall file an application for renewal of approval under R4-19-210 within 30 days of loss of or lapse in accreditation status.

E. Under A.R.S. § 32-1644(D) the Board may periodically re-survey a nationally accredited program to determine compliance with this Article and require a self study report. Board site visits may be conducted in conjunction with the national accrediting team.

F. Unless otherwise notified by the Board following receipt and review of the documents required by subsections (A), (B) and

(C), a nationally accredited nursing program continues to have full-approval status. The administrator of a nursing program that has its continuing approval-status rescinded by the Board may request a hearing by filing a written request with the Board within 30 days of service of the Board's order rescinding continuing full-approval status. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). R4-19-213 renumbered to R4-19-215; New Section R4-19-213 renumbered from R4-19-212 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-214. Pilot Programs for Innovative Approaches in Nursing Education

A. Under A.R.S. § 32-1606(A)(9) a nursing education program, refresher program or a certified nursing assistant program may implement a pilot program for an innovative approach by complying with the provisions of this Section. Education programs approved to implement innovative approaches shall comply with all other applicable provisions of A.R.S. Title 32, Chapter 15 and A.A.C. Title 4, Chapter 19.

B. A program applying for a pilot program shall:
1. Hold full approval;
2. Have no substantiated complaints, discipline or deficiencies in the past two years; and
3. Have been compliant with all Board regulations during the past two years.

C. The following written information shall be provided to the Board at least 90 days prior to a Board meeting:
1. Identifying information including name of program, address, responsible party and contact information;
2. A brief description of the current program, including accreditation and Board approval status;
3. Identification of the regulation or regulations that the proposed innovative approach would violate;
4. Length of time for which the innovative approach is requested;
5. Description of the innovative approach, including objectives;
6. Brief explanation of the rationale for the innovative approach at this time;
7. Explanation of how the proposed innovation differs from approaches in the current program;
8. Available evidence supporting the innovative approach;
9. Identification of resources that support the proposed innovative approach;
10. Expected impact the innovative approach will have on the program, including administration, students, faculty, and other program resources;
11. Plan for implementation, including timeline;
12. Plan for evaluation of the proposed innovation, including measurable outcomes, method of evaluation, and frequency of evaluation; and
13. Additional application information as requested by the Board.

D. The Board shall approve an application for innovation that meets the following criteria:
1. Eligibility criteria in subsection (B) and application criteria in subsection (C) are met;
2. The innovative approach will not compromise the quality of education or safe practice of students;
3. Resources are sufficient to support the innovative approach;
4. Rationale with available evidence supports the implementation of the innovative approach;
5. Implementation plan is reasonable to achieve the desired outcomes of the innovative approach;
6. Timeline provides for a sufficient period to implement and evaluate the innovative approach; and
7. Plan for periodic evaluation is comprehensive and supported by appropriate methodology.

E. The Board may:
1. Deny the application or request additional information if the program does not meet the criteria in subsections (B) and (C); or
2. Rescind the approval of the innovation or require the program to make modifications if:
   a. The Board receives substantiated evidence indicating adverse impact,
   b. The program fails to implement or evaluate the innovative approach as presented and approved, or
   c. The program fails to maintain eligibility criteria in subsection (B).

F. An education program that is granted approval for an innovation shall maintain eligibility criteria in subsection (B) and submit:
1. Progress reports conforming to the evaluation plan annually or as requested by the Board; and
2. A final evaluation report that conforms to the evaluation plan, detailing and analyzing the outcomes data.

G. If the innovative approach has achieved the desired outcomes and the final evaluation has been submitted, the program may request that the innovative approach be continued.

H. The Board may grant the request to continue approval if the innovative approach has achieved desired outcomes and has not compromised public protection.

Historical Note

Adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 7 A.A.R. 5349, effective November 8, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (05-1). R4-19-214 renumbered to R4-19-216; New Section R4-19-214 made by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-215. Voluntary Termination of a Nursing Program or a Refresher Program

A. The administrator of a nursing program or a refresher program shall notify the Board within 15 days of a decision to voluntarily terminate the program. The administrator shall, at the same time, submit a written plan for terminating the nursing program or refresher program. A program is considered voluntarily terminated when it no longer admits or plans to admit students after current students graduate.

B. The administrator shall ensure that the nursing program or refresher program is maintained, including the nursing faculty, until the last student is transferred or completes the program. At that time the Board shall remove the program from the current list of approved programs.

C. Within 15 days after the termination of a nursing program or refresher program, the administrator shall notify the Board of the permanent location and availability of all program records.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 451, effective March 7, 2005 (Supp. 05-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). R4-19-215 renumbered to R4-19-217; New

Section R4-19-215 renumbered from R4-19-213 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-216. Approval of a Refresher Program

A. An applicant for approval of a refresher program for nurses whose licenses have been inactive or expired for five or more years, nurses under Board order to enroll in a refresher program, or nurses who have not met the requirements of R4-19-312 shall submit one electronic and one paper copy of a completed application that provides all of the following information and documentation:
1. Applicant's name, address, e-mail address, telephone number, web site address, if applicable, and fax number;
2. Proposed starting date for the program;
3. Name and qualifications of all instructors that meet the requirements of subsection (C);
4. Statement describing the facilities, staff, and resources that the applicant will use to conduct the refresher program;
5. A program and participant evaluation plan that includes student evaluation of the course, instructor, and clinical experience;
6. Evidence of a curriculum that meets the requirements of subsection (B);

B. A refresher program shall provide:
1. A minimum of 40 hours of didactic instruction for a licensed practical nurse program and 80 hours of didactic instruction for a registered nurse program. Didactic instruction shall include, at a minimum:
   a. Nursing process and patient centered care;
   b. Pharmacology, medication calculation, and medication administration;
   c. Communication;
   d. Critical thinking, clinical decision making and evidence-based practice;
   e. Delegation, management, and leadership;
   f. Working with interdisciplinary teams;
   g. Meeting psychosocial and physiological needs of adult clients with medical-surgical conditions;
   h. Ethics;
   i. Documentation including electronic health records;
   j. Informatics;
   k. Quality Improvement; and
   l. At the program's discretion, additional content hours in other populations of care for students who will be engaged in clinical experiences with these populations.
2. A clinical experience of a type and duration to meet course objectives for each student which consists of a minimum of 112 hours for a practical nurse program and 160 hours for a registered nurse program. Relative to the clinical portion of the program, the program shall:
   a. Ensure that each qualified student has a verified clinical placement within 12 months of course enrollment;
   b. Provide program policies for clinical placement in advance of enrollment that specify both the obligations of the school and the student regarding placement;
   c. Validate that a student has the necessary theoretical knowledge to function safely in the specific clinical setting before starting a clinical experience;
   d. Ensure that clinical placements provide an opportunity to demonstrate safe and competent application of program didactic content through either direct or indirect client care; and
   e. Include, at its discretion, up to 32 hours of scheduled clinical time in laboratory experiences including simulation.
3. Curriculum and other materials to students and prospective students that, include:
   a. An overall program description including goals;
   b. Objectives, content, and hours allotted for each area of instruction;
   c. Implemented course policies that include but are not limited to admission requirements, passing criteria, cause for dismissal, clinical requirements, grievance process and student responsibilities; and
   d. Program costs and length of the program.

C. Refresher program personnel qualifications and responsibilities:
1. An administrator of a refresher program shall:
   a. Hold a graduate degree in nursing or a bachelor of science in nursing degree and a graduate degree in either education or a health-related field, and
   b. Be responsible for administering and evaluating the program.
2. A faculty member of a refresher program shall:
   a. Hold a minimum of a bachelor of science in nursing degree,
   b. Be responsible for implementing the curriculum and supervising clinical experiences either directly or indirectly through the use of clinical preceptors.
3. Licensure requirements for program administrator and faculty:
   a. If the program is located in Arizona, the administrator and faculty members shall hold a current Arizona RN license in good standing or a multi-state privilege under A.R.S., Title 32, Chapter 15;
   b. If the program is located in another state, the administrator and didactic faculty members shall either hold a current RN license in good standing in the state of the program location or meet the requirements of subsection (a).
4. If preceptors are used for clinical experiences, the program shall adhere to the preceptorship requirements of R4-19-206(E).
5. Other licensed health care professionals may participate in course instruction consistent with their licensure and scope of practice and under the direction of the program administrator or faculty.

D. Program types; bonding
1. A refresher program may be offered by:
   a. A private educational institution that is accredited by the private post-secondary board,
   b. A public post-secondary educational institution,
   c. A licensed health care institution, or
   d. A private individual, partnership or corporation.
2. If the refresher program is offered by a private individual, partnership or corporation, the program shall:
   a. Submit proof of insurance covering any potential or future claims for damages resulting from any aspect of the program or provide evidence of a surety bond from a surety company with a rating of "A" or better by either Best's Credit Ratings, Moody's Investor Service, or Standard and Poor's rating service in the amount of a minimum of $15,000. The program shall ensure that:
      i. Bond or insurance distributions are limited to students or former students with a valid claim for instructional or program deficiencies;

ii. The amount of the bond or insurance coverage is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
iii. The bond or insurance is maintained for an additional 24 months after program closure.
b. For programs offering on-ground instruction, provide a fire inspection report of the classroom and building by the Arizona State Fire Marshal or an entity approved by the Arizona State Fire Marshal for each program location.
c. Subsection (D) is effective immediately for new programs and within one year of the effective date for approved programs.

E. The Board shall approve a refresher program that meets the requirements of this Section, if approval is in the best interest of the public, for a maximum term of five years. An applicant who is denied refresher program approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

F. The refresher program sponsor shall apply for renewal of approval in accordance with subsection (A) not later than 90 days before expiration of the current approval. The sponsor of a refresher program that is denied renewal of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

G. The sponsor of an approved refresher program shall provide written notification to the Board within 15 days of a participant's completion of the program of the following:
1. Name of the participant and whether the participant successfully completed or failed the program,
2. Participant's license, and
3. Date of participant's completion of the program.

H. The Board may accept a refresher program from another U.S. jurisdiction for an individual applicant on a case-by-case basis if the applicant provides verifiable evidence that the refresher program substantially meets the requirements of this Section. The acceptance of the program for an individual applicant does not confer approval status upon the program.

I. Within 30 days, a refresher program shall report to the Board changes in:
1. Name, address, electronic address, web site address or phone number of the program;
2. Clinical or didactic hours of the program;
3. Program delivery method; or
4. Ownership including adding or deleting an owner.

J. The Board may take action against the approval of a refresher program under A.R.S § 32-1606(C) and the provisions of this Article. The administrator of a refresher program whose approval is disciplined or subject to a notice of deficiency may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, and 4 A.A.C. 19, Article 6.

Historical Note

New Section R4-19-216 renumbered from R4-19-214 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-217. Distance Learning Nursing Programs; Out-of-State Nursing Programs

A. An out-of-state nursing program that is in good standing in another state and plans to provide distance based didactic instruction and on-ground clinical instruction in Arizona shall comply with the application requirements of R4-19-207 and R4-19-208. The program shall employ at least one faculty member who is physically present in this state to coordinate the education and clinical experience.

B. Any nursing program that delivers didactic instruction by distance learning methods, whether in this state or another, shall ensure that the methods of instruction are compatible with the program curriculum plan and enable a student to meet the goals, competencies, and objectives of the educational program and standards of the Board.
1. A distance learning nursing program shall establish a means for assessing individual student outcomes, and program outcomes including, at minimum, student learning outcomes, student retention, student satisfaction, and faculty satisfaction.
2. For out-of-state nursing programs, the program shall be within the jurisdiction of and regulated by an equivalent United States nursing regulatory authority in the state from which the program originates, unless also providing clinical experience in Arizona.
3. Didactic faculty members shall be licensed in the state of origination of a distance learning nursing program and in Arizona or hold a multi-state compact license unless exempt under A.R.S. § 32-1631(8). Clinical supervising faculty shall be licensed in the location of the clinical activity.
4. A distance learning nursing program shall provide students with supervised clinical and laboratory experiences so that program objectives are met and didactic learning is validated by supervised, land-based clinical and laboratory experiences.
5. A distance-learning nursing program shall provide students with access to technology, resources, technical support, and the ability to interact with peers, preceptors, and faculty.

C. A nursing program, located in another state or territory of the United States, that wishes to provide clinical experiences in Arizona under A.R.S. § 32-1631(3), shall obtain Board approval before offering or conducting a clinical session. To obtain approval, the program shall submit a proposal package that contains:
1. A self study, describing the program's compliance with R4-19-201 through R4-19-206; and
2. A statement regarding, the number and type of student placements planned, a copy of signed clinical contracts and written commitment by the clinical facilities to provide the necessary clinical experiences, the name and qualifications of faculty licensed in Arizona and physically present in the facility who will supervise the experience and verification of good standing of the program in the jurisdiction of origin.

D. The Board may require a nursing program approved under this Section to file periodic reports for the purpose of data collection or to determine compliance with the provisions of this Article. A program shall submit a report to the Board within 30 days of the date on a written request from the Board or by the due date stated in the request if the due date is after the normal 30-day period.

E. The Board shall approve an application to conduct clinical instruction in Arizona that meets the requirements in A.R.S.

Title 32, Chapter 15 and this Chapter, and is in the best interest of the public. An applicant who is denied approval to conduct clinical instruction in Arizona may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

F. The Board may rescind an approval held by an out-of-state nursing program to conduct clinical instruction in Arizona, in accordance with R4-19-212.

G. If the Board finds that a nursing program located and approved in another state or territory of the United States does not meet requirements for nursing programs prescribed in this Article the Board shall either provide a notice of deficiency to the program as prescribed in R4-19-212(A), (A)(1) and (A)(2) or take other disciplinary action depending on the severity of the offense under R4-19-211.

1. If the Board issues a notice of deficiency and the program fails to correct the deficiency before the expiration of the period of correction, the Board shall rescind approval of the program as prescribed in R4-19-212(B)(1).
2. If the period of rescission, from the date of rescission to the date of reinstatement, is at any time concurrent with an applicant's education from the date of admission to the date of graduation, the Board shall withhold licensure unless the applicant meets all licensure requirements and completes any remedial education prescribed by the Board under R4-19-301(H). The Board shall ensure that the applicant has completed a curriculum that is equivalent to that of an approved nursing program.
3. If a nursing program provides evidence of compliance with this Article after the rescission of approval, the Board shall review the evidence, determine whether or not the nursing program complies with these standards, and reinstate approval of the program if the program complies with these standards and reinstatement is in the best interest of the public.

Historical Note

New Section R4-19-217 renumbered from R4-19-215 and amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

ARTICLE 3. LICENSURE

R4-19-301. Licensure by Examination

A. An applicant for licensure by examination shall:

1. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and all former names used by the applicant;
   b. Mailing address, including declared primary state of residence, and telephone number;
   c. Place and date of birth;
   d. Ethnic category, marital status and e-mail address, at the applicant's discretion;
   e. Social Security number for an applicant who lives or works in the United States;
   f. Post-secondary education, including the names and locations of all schools attended, graduation dates, and degrees received, if applicable;
   g. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
   h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
   i. Any state, territory, or country in which the applicant holds or has held a registered or practical nursing license and the license number and status of the license, including original state of licensure, if applicable;
   j. The date the applicant previously filed an application for licensure in Arizona, if applicable;
   k. Responses to questions regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      ii. Action taken on a nursing license by any other state;
      iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
      iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R. S. § 32-3208;
      v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      vi. Substance use disorder within the last 5 years;
      vii. Current participation in an alternative to discipline program in any other state;
   l. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and.
   m. Certification in nursing including category, specialty, name of certifying body, date of certification, and expiration date.
2. Submit proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
3. Submit a completed fingerprint card on a form provided by the Board or prints for the purpose of obtaining a criminal history report under A.R.S. § 32-1606 if the applicant has not submitted a fingerprint card or prints to the Board within the last two years; and
4. Pay the applicable fees.

B. If an applicant is a graduate of a pre-licensure nursing program in the United States that has been assigned a program code by the National Council of State Boards of Nursing during the period of the applicant's attendance, the applicant shall submit one of the following:

1. If the program is an Arizona-approved program, the transcript required in subsection (B)(2) or a statement signed by a nursing program administrator or designee verifying that:
   a. The applicant graduated from or is eligible to graduate from a registered nursing program for a registered nurse applicant; or
   b. The applicant graduated from or is eligible to graduate from a practical nursing program or graduated from a registered nursing program and completed Board-prescribed role delineation education for a practical nurse applicant; or
2. If the program is located either in Arizona or in another state or territory and meets educational standards that are substantially comparable to Board standards for educational programs under Article 2 when the applicant completed the program, an official transcript sent directly from one of the following as:

a. Evidence of graduation or eligibility for graduation from a diploma registered nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a registered nurse applicant.
b. Evidence of graduation or eligibility for graduation of a practical nursing program, associate degree registered nursing program, or baccalaureate or higher degree registered nursing program for a practical nurse applicant.

C. If an applicant is a graduate of a pre-licensure international nursing program and lacks items required in subsection (B), the applicant shall comply with subsection (A), submit a self report on the status of any international nursing license, and submit the following:
1. To demonstrate nursing program equivalency, one of the following:
   a. If the applicant graduated from a Canadian nursing program, evidence of a passing score on the English language version of either the Canadian Nurses' Association Testing Service, the Canadian Registered Nurse Examination, NCLEX or an equivalent examination;
   b. A Certificate or Visa Screen Certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS), or a report from CGFNS that indicates an applicant's program is substantially comparable to a U.S. program; or
   c. A report from any other credential evaluation service (CES) approved by the Board.
2. If a graduate of an international pre-licensure nursing program subsequently obtains a degree in nursing from an accredited U.S. nursing program, the requirement for a CES equivalency report may be waived by the Board, however the applicant is not eligible for a multi-state compact license.
3. If an applicant's pre-licensure nursing program provided classroom instruction, textbooks, or clinical experiences in a language other than English, a test of written, oral, and spoken English is required. Clinical experiences are deemed to have been provided in a language other than English if the principal or official language of the country or region where the clinical experience occurred is a language other than English, according to the United States Department of State.
4. An applicant who is required to demonstrate English language proficiency shall ensure that one of the following is submitted to the Board directly from the testing or certifying agency:
   a. Evidence of a minimum score of 84 with a minimum speaking score of 26 on the Internet-based Test of English as a Foreign Language (TOEFL),
   b. Evidence of a minimum score of 6.5 overall with minimum of 6.0 on each module of the Academic Exam of the International English Language Test Service (IELTS) Examination,
   c. Evidence of a minimum score of 55 overall with a minimum score of 50 on each section of the Pearson Test of English Academic exam.
   d. A Visa Screen Certificate from CGFNS,
   e. A CGFNS Certificate,
   f. Evidence of a similar minimum score on another written and spoken English proficiency exam determined by the Board to be equivalent to the other exams in this subsection, or
   g. Evidence of employment for a minimum of 960 hours within the past five years as a nurse in a country or territory where the principal language is English, according to the United States Department of State.

D. An applicant for a registered nurse license shall attain one of the following:
1. A passing score on the NCLEX-RN;
2. A score of 1600 on the NCLEX-RN, if the examination was taken before July 1988; or
3. A score of not less than 350 on each part of the SBTPE for registered nurses.

E. An applicant for a practical nurse license shall attain:
1. A passing score on the NCLEX-PN;
2. A score of not less than 350 on the NCLEX-PN, if the examination was taken before October 1988; or
3. A score of not less than 350 on the SBTPE for practical nurses.

F. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by examination may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

G. If the Board receives an application from a graduate of a nursing program and the program's approval was rescinded under R4-19-212 at any time during the applicant's nursing education, the Board shall ensure that the applicant has completed a basic curriculum that is equivalent to that of a Board-approved nursing program and may do any of the following:
1. Grant licensure, if the program's approval was reinstated during the applicant's period of enrollment and the program provides evidence that the applicant completed a curriculum equivalent to that of a Board-approved nursing program;
2. By order, require successful completion of remedial education while enrolled in a Board approved nursing program which may include clinical experiences, before granting licensure; or
3. Return or deny the application if the education was not equivalent and no remediation is possible.

Historical Note

Former Section II, Part I; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-24 repealed, new Section R4-19-24 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-24 renumbered as Section R4-19-301 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-302. Licensure by Endorsement

A. An applicant for a license by endorsement shall submit all of the information required in R4-19-301(A).

B. In addition to the information required in subsection (A), an applicant for a license by endorsement shall:

1. Submit evidence of a passing examination score in accordance with:
   a. R4-19-301(E) for a registered nurse applicant, or
   b. R4-19-301(F) for a practical nurse applicant.
2. Submit the following:
   a. Evidence of previous or current license in another state or territory of the United States,
   b. Information related to the nurse's practice for the purpose of collecting nursing workforce data, and
   c. One of the following:
      i. Completion of a pre-licensure nursing program that has been assigned a nursing program code by the National Council of State Boards of Nursing (NCSBN) at the time of program completion and the program meets educational standards substantially comparable to Board standards for educational programs in Article 2;
      ii. If the applicant completed a pre-licensure nursing program that has been assigned a program code by the NCSBN but the program's approval was rescinded under A.R.S. § 32-1606(B)(8) or removed from the list of approved programs under A.R.S. § 32-1644(D) or R4-19-212 during the applicant's enrollment in the program, proof of completion of the program and completion of any remedial education required by the Board to mitigate the deficiencies in the applicant's initial nursing program;
      iii. If the applicant graduated from a U.S. nursing program before 1986 and the applicant was issued an initial license in another state or territory of the United States without being required to obtain additional education or experience, proof both of program completion and initial licensure without additional educational or experiential requirements;
      iv. If the applicant graduated from an international nursing program, proof of meeting the requirements in R4-19-301.
      v. If the Board finds that the documentation submitted by the applicant does not fulfill one of the requirements in (B)(2)(b)(i) through (iv), but the applicant has submitted verified employer evaluations demonstrating applicant's safe practice as a registered or practical nurse in another state for a minimum of two years full-time during the past three years and applicant otherwise meets licensure requirements, the Board may grant a single-state only license if the Board determines that licensure is in the best interest of the public.

C. The Board shall grant a license to practice as a registered or practical nurse to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a license by endorsement may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part II; Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-25 repealed, new Section R4-19-25 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-25 renumbered and amended as Section R4-19-302 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-303. Requirements for Credential Evaluation Service

A. A CES seeking Board approval shall submit documentation to the Board demonstrating that it:
1. Provides a credential evaluation to determine comparability of registered nurse or practical nurse programs in other countries to nursing education in the United States;
2. Evaluates original source documents;
3. Has five or more years of experience in evaluating nursing educational programs or employs personnel that have this experience;
4. Employs staff with expertise in evaluating nursing programs;
5. Has access to resources pertinent to the field of nursing education and the evaluation of nursing programs;
6. Issues a report on each applicant, and supplies the Board with a sample of such a report, regarding the comparability of the applicant's nursing educational program to nursing education in the United States that includes:
   a. The current name of the applicant including any names formerly used by the applicant;
   b. Source and description of the documents evaluated;
   c. Name and nature of the nursing education program, including status of the parent institution;
   d. Dates applicant attended;
   e. References consulted;
   f. A seal or some other security measure;
   g. Notification of any falsification or misrepresentation of documents by the applicant;
   h. A report on licensure examination results for the applicant, if an exam was required for licensure in the international jurisdiction; and
   i. The status of any international nursing licenses held by the applicant.
7. Has a quality control program that includes at a minimum:
   a. Standards regarding the use of original documents;
   b. Verification of authenticity of documents and translations;
   c. Processes and procedures to prevent and detect fraud;
   d. Policies for maintaining confidentiality of applicant educational records;
   e. Responsiveness to applicants, including ensuring that reports are issued no later than eight weeks from the receipt of an applicant's documents; and
   f. Tracking of and notification to the Board of any trends in falsification or misrepresentation of documents;
8. Follows or exceeds the standards of the National Association of Credentialing Services (NACES) or an equivalent organization;
9. Responds to Board requests for information in a timely and thorough manner; and
10. Agrees to notify the Board before any changes in any of the above criteria.

B. If a CES fails to comply with the provisions of subsection (A), the Board may rescind its approval of the CES.

C. The Board shall approve a credential evaluation service that meets the criteria established in this Section. A CES applicant who is denied approval or whose approval is revoked may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part III; Former Section R4-19-26 repealed, new Section R4-19-26 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-26 renumbered and amended as Section R4-19-27, new Section R4-19-26 adopted effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered as Section R4-19-303 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 1802, effective May 18, 1999 (Supp. 99-2). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-303 renumbered to R4-19-304; new Section R4-19-303 made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-304. Temporary License

A. Subject to subsection (B), the Board shall issue a temporary license if:
1. An applicant:
   a. Is qualified under:
      i. A.R.S. § 32-1635 and applies for a temporary registered nursing license, or is qualified under A.R.S. § 32-1640 and applies for a temporary practical nursing license; and
      ii. R4-19-301 for applicants for licensure by examination, or is qualified under R4-19-302 for applicants for licensure by endorsement; and
   b. Submits an application for a temporary license with the applicable fee required under A.R.S. § 32-1643(A)(9); and
   c. Submits an application for a license by endorsement or examination with the applicable fee required under A.R.S. § 32-1643(A).
2. An applicant is seeking a license by examination, meets the requirements of R4-19-312(D), and the Board receives a report from the Arizona Department of Public Safety (DPS), verifying that DPS has no criminal history record information, as defined in A.R.S. § 41-1701, relating to the applicant or that any criminal history reported has been reviewed by the executive director or the director's designee and determined not to pose a threat to public health, safety, or welfare; or
3. An applicant is seeking a license by endorsement, meets the requirements in R4-19-312(B), and the applicant submits evidence that the applicant has a current license in good standing in another state or territory of the United States or, if no current license, a previous license in good standing that was not the subject of an investigation or pending discipline; or
4. An applicant who does not meet the practice requirements in R4-19-312(B) or (D), but provides evidence that the applicant has applied for enrollment in a refresher or other competency program approved by the Board, may practice nursing under a temporary license during the clinical portion of the program only.

B. An applicant who has a criminal history, a history of disciplinary action by a regulatory agency, a pending complaint before the Board, or answers affirmatively to any criminal background or disciplinary question in the application is not eligible for a temporary license or extension of a temporary license without Board approval.

C. A temporary license is valid for a maximum of 12 months unless extended for good cause under subsection (D) of this Section.

D. An applicant with a temporary license may apply for and the Board, the Executive Director or the Executive Director's designee may grant an extension of the temporary license period for good cause. Good cause means reasons beyond the control of the temporary licensee, such as unavoidable delays in obtaining information required for licensure.

E. An applicant who receives a temporary license but does not meet the criteria for a regular license within the established period under subsections (C) and (D) is no longer eligible for a temporary license except for the purpose of completing a refresher or other competency program under subsection (A)(4) of this Section.

Historical Note

Former Section II, Part IV; Amended effective January 20, 1975 (Supp. 75-1). Former Section R4-19-27 repealed, new Section R4-19-27 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-27 renumbered and amended as Section R4-19-28. Former Section R4-19-26 renumbered and amended as Section R4-19-27 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-27 renumbered and amended as Section R4-19-304 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-304 renumbered to R4-19-305; new Section R4-19-304 renumbered from R4-19-303 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). Chapter Section references updated under subsections (A)(2) and (A)(4) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-305. License Renewal

A. An applicant for renewal of a registered or practical nursing license shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
   a. Full legal name, mailing address, telephone number and declared primary state of residence;
   b. A listing of all states in which the applicant is currently licensed, or, since the last renewal, was previously licensed or has been denied licensure;
   c. Marital status, ethnic category and e-mail address, at the applicant's discretion;
   d. Information regarding qualifications, including:
      i. Educational background;
      ii. Employment status;
      iii. Practice setting; and
      iv. Other information related to the nurse's practice for the purpose of collecting nursing workforce data.
   e. Responses to questions regarding the applicant's background on the following subjects:

i. Criminal convictions for offenses involving drugs or alcohol since the time of last renewal;
ii. Undesignated offenses and felony charges, convictions and plea agreements including deferred prosecution;
iii. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
iv. Unprofessional conduct as defined in A.R.S. § 32-1601 since the time of last renewal;
v. Substance use disorder within the last five years;
vi. Current participation in an alternative to discipline program in any other state; and
vii. Disciplinary action or investigation related to the applicant's nursing license by any other state nursing regulatory agency since the last renewal.

f. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;
g. Information related to the applicant's current or most recent nursing practice setting, including position, address, telephone number, and dates of practice;
h. Information regarding the applicant's compliance with the practice or education requirements in R4-19-312;
i. National certification in nursing including specialty, name of certifying body, date of certification, certification number, and expiration date, if applicable; and for an applicant certified as a registered nurse practitioner or clinical nurse specialist the patient population of the certification; and

2. Pay fees for renewal authorized by A.R.S. § 32-1643 (A)(6); and
3. Pay an additional fee for late renewal authorized by A.R.S. § 32-1643(A)(7) if the application for renewal is submitted after May 1 of the year of renewal.

B. A license expires on August 1 of the year of renewal indicated on the license.

C. A licensee who fails to submit a renewal application before expiration of a license shall not practice nursing until the Board issues a renewal license.

D. If the applicant holds a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate a license until a review or investigation has been completed and a decision regarding eligibility for renewal or reactivation is made by the Board.

E. The Board shall renew the license of any registered or practical nurse applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part V; Repealed effective January 20, 1975 (Supp. 75-1). New Section R4-19-28 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-28 renumbered and amended as Section R4-19-29. Former Section R4-19-27 renumbered and amended as Section R4-19-28 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and repealed as Section R4-19-305 effective February 21, 1986 (Supp. 86-1). New Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-305 renumbered to R4-19-306; new Section R4-19-305 renumbered from R4-19-304 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-306. Inactive License

A. A licensee in good standing may submit to the Board either as a separate written document or as part of the renewal application, a request to transfer to inactive status, or retirement status under A.R.S. §§ 32-1606(A)(10) and 32-1636(E).

B. The Board shall send a written notice to the licensee granting inactive or retirement status or denying the request. A licensee denied a request for transfer to inactive or retirement status may request a hearing by filing a written request with the Board within 30 days of service of the denial of the request. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part VI; Amended effective January 20, 1975 (Supp. 75-1). Amended effective December 7, 1976 (Supp. 76-5). Former Section R4-19-29 repealed, new Section R4-19-29 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-29 renumbered and amended as Section R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-28 renumbered and amended as Section R4-19-29 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered as Section R4-19-306 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-306 renumbered to R4-19-307; new Section R4-19-306 renumbered from R4-19-305 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-307. Application for a Duplicate License

A. A licensee shall report a lost or stolen license to the Board, in writing or electronically through the Board website, within 30 days of the loss.

B. A licensee requesting a duplicate license shall file an application on a form provided by the Board for a duplicate license and pay the applicable fee under A.R.S. § 32-1643(A)(14).

Historical Note

Former Section II, Part VII; Former Section R4-19-30 renumbered and amended as Section R4-19-45, new Section R4-19-30 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-30 renumbered and amended as Section R4-19-31. Former Section R4-19-29 renumbered and amended as R4-19-30 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-29 renumbered and amended as Section R4-19-307 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-307 renumbered to R4-19-308; new Section R4-19-307 renumbered from R4-19-306 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R.

1308, effective July 6, 2013 (Supp. 13-2).

R4-19-308. Change of Name or Address

A. A licensee or applicant shall notify the Board, in writing or electronically through the Board website, of any legal change in name within 30 days of the change, and submit a copy of the official document verifying the name change.

B. A licensee or applicant shall notify the Board in writing or electronically through the Board website of any change in mailing address within 30 days.

Historical Note

Former Section II, Part VII; Former Section R4-19-31 repealed, new Section R4-19-31 adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32. Former Section R4-19-30 renumbered and amended as Section R4-19-31 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-31 renumbered as Section R4-19-308 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended effective December 3, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 4819, effective December 7, 2000 (Supp. 00-4). Former Section R4-19-308 renumbered to R4-19-309; new Section R4-19-308 renumbered from R4-19-307 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-309. School Nurse Certification Requirements

A. An applicant for initial school nurse certification shall:

1. Hold a current license in good standing or multistate privilege to practice as a registered nurse in Arizona.
2. Submit a verified application to the Board on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and any former names used by the applicant;
   b. Mailing address and telephone number;
   c. Registered nurse license number;
   d. Social security number;
   e. A description of the applicant's educational background, including the number and location of schools attended, the number of years attended, the date of graduation, the type of degree or certificate awarded, and if applicable, evidence that the applicant has satisfied the requirements specified in subsection (B), (C) or (D);
   f. Current employer, including address, telephone number, position type, dates of employment, and previous employer if the current employment is less than 12 months;
   g. The name of any national certifying organization, specialty area, certification number and date of certification, if applicable; and for an applicant certified in as a nurse practitioner or clinical nurse specialist, the population of the certification;
   h. Responses to questions regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories or current investigation in another state or territory of the United States;
      ii. Action taken on a nursing license by any other state;
      iii. Undesignated offenses, felony charges, convictions and plea agreements, including deferred prosecution;
      iv. Misdemeanor charges, convictions and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208:
      v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      vi. Substance use disorder within the last five years; and
      vii. Current participation in an alternative to discipline program in any other state;
   i. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background; and
   j. E-mail address, ethnic category and marital status at the applicant's discretion.
3. Pay applicable fees.

B. National certification. In addition to the requirements of subsection (A), if an applicant provides evidence of current national certification as a school nurse or school nurse practitioner from an organization that meets the requirements of R4-19-310, the applicant qualifies for Arizona school nurse certification without meeting the requirements in subsection (C) for as long as the national certification remains current. The nurse shall provide evidence of continuing certification upon each renewal under subsection (D).

C. Initial certification

1. In addition to the requirements in subsection (A), the registered nurse applicant shall provide evidence of completion of all the following:
   a. Three semester hours in school nurse practice course work;
   b. Three semester hours in physical assessment of the school-aged child course work unless the applicant provides evidence of current national certification from an organization that meets the requirements of R4-19-310 as a pediatric nurse practitioner, family nurse practitioner, or pediatric clinical nurse specialist; and
   c. Three semester hours in nursing care of the child with special needs.
2. An initial certificate expires six years after the issue date on the certificate.

D. Renewal of certification.

1. If the initial certificate of a school nurse has expired and the applicant, has met the requirements in subsections (B) or (C)(1) of this Section, the applicant is eligible to apply for re-certification. Within the application, the applicant shall provide evidence of completion of one of the following for renewal of certification:
   a. Current national certification as a school nurse as specified in subsection (B),
   b. A bachelor of science or graduate degree in nursing earned from an accredited institution as specified in R4-19-201(A) within the last six years, or
   c. Evidence of completion of a minimum of 90 contact hours of continuing education activity, as defined in R4-19-101, related to school nursing practice and completed within the last six years.
2. Renewal of certification expires six years after the issue date on the certificate.

E. The Board shall grant a school nurse certificate to any applicant who meets the criteria established in statute and this Article. An applicant who is denied a school nurse certificate may

request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section II, Part IX; Repealed effective February 20, 1980 (Supp. 80-1). Former Section R4-19-31 renumbered and amended as Section R4-19-32 effective May 9, 1984 (Supp. 84-3). Former Section R4-19-32 renumbered as Section R4-19-309 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 8 A.A.R. 1813, effective March 20, 2002 (Supp. 02-1). Former Section R4-19-309 renumbered to R4-19-311; new Section R4-19-309 renumbered from R4-19-308 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

R4-19-310. Certified Registered Nurse

A registered nurse who has been certified by a nursing certification organization accredited by the Accreditation Board for Specialty Nursing Certification, the National Commission for Certifying Agencies, or an equivalent accrediting agency as determined by the Board is deemed certified for the purposes of A.R.S. § 32-1601(5).

Historical Note

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-311. Nurse Licensure Compact

The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the Nurse Licensure Compact Model Rules and Regulations for RNs and LPN/VNs, published by the National Council of State Boards of Nursing, Inc., 111 E. Wacker Dr., Suite 2900, Chicago, IL 60601, www.ncsbn.org, November 13, 2012, and no later amendments or editions, which is incorporated by reference and on file with the Board.

Historical Note

New Section renumbered from R4-19-309 and amended by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Amended by final rulemaking at 18 A.A.R. 2485, effective September 11, 2012 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 2852, effective September 11, 2013 (Supp. 13-3).

R4-19-312. Practice Requirement

A. The Board shall not issue a license or renew the license of an applicant who does not meet the applicable requirements in subsections (B), (C), and (D).

B. An applicant for licensure by endorsement or renewal shall either have completed a post-licensure nursing program or practice nursing at the applicable level of licensure for a minimum of 960 hours in the five years before the date on which the application is received. This requirement is satisfied if the applicant verifies that the applicant has:

1. Completed a post-licensure nursing education program at a school that is accredited under R4-19-201(A) and obtained a degree, or an advanced practice certificate in nursing within the past five years; or
2. Practiced for a minimum of 960 hours within the past five years where the nurse:
   a. Worked for compensation or as a volunteer, as a licensed nurse in the United States or an international jurisdiction, and performed one or more acts under A.R.S. § 32-1601(21) as an RN if applying for RN renewal or licensure or A.R.S. § 32-1601(17) as an LPN if applying for LPN renewal or licensure; or
   b. Held a position for compensation or as a volunteer in the United States or an international jurisdiction that required or recommended, in the job description, the level of licensure being sought or renewed; or
   c. Engaged in clinical practice as part of an RN-to-Bachelor of Science in Nursing, Masters, Doctoral or Nurse Practitioner program.

C. Care of family members does not meet the requirements of subsection (B)(2) unless the applicant submits evidence:

1. That the applicant is providing care as part of a medical foster home; or
2. That the specific care provided by the applicant was:
   a. Ordered by another health care provider who is authorized to prescribe and was responsible for the care of the patient,
   b. The type of care would typically be authorized by a third-party payer, and
   c. The care was documented and reviewed by the health care provider.

D. An applicant for licensure by either examination or endorsement, who is a graduate of a nursing program located in the U.S. or its territories and does not meet the requirements of subsection (B), shall have completed the clinical portion of a pre-licensure nursing program within two years of the date of licensure. Examination applicants who were previously licensed in an international jurisdiction shall meet the applicable requirements of subsection (B) or (E).

E. A licensee or applicant who fails to satisfy the requirements of subsection (B) or (D), shall submit evidence of satisfactory completion of a Board-approved refresher or competency program. The Board may issue a temporary license stamped "for refresher course only" to any applicant who meets all requirements of this Article except subsection (B) or (D) and provides evidence of applying for enrollment in a Board-approved refresher or competency program.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (B)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2). A.R.S. Section references updated under subsection (B)(2)(a) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-313. Background

A. All applicants convicted of a sexual offense involving a minor or performing a sexual act against the will of another person shall be subject to a Board order under A.R.S. § 32-1664(F) and R4-19-405 unless the individual is precluded from licensure under A.R.S. § 32-1606(B)(17). If the evaluation identifies sexual behaviors of a predatory nature, the Board shall deny licensure or renewal of licensure.

B. All individuals reporting a substance use disorder in the last five years may be subject to a Board order for an evaluation

under A.R.S. § 32-1664(F) and R4-19-405 to determine safety to practice.

C. The Board may order the evaluation of other individuals on a case-by-case basis under A.R.S. § 32-1664(F) and R4-19-405.

Historical Note

New Section made by final rulemaking at 19 A.A.R. 1308, effective July 6, 2013 (Supp. 13-2).

ARTICLE 4. REGULATION

R4-19-401. Standards Related to Licensed Practical Nurse Scope of Practice

A. A licensed practical nurse shall engage in practical nursing as defined in A.R.S. § 32-1601 only under the supervision of a registered nurse or licensed physician.

B. A LPN's nursing practice is limited to those activities for which the LPN has been prepared through basic practical nursing education in accordance with A.R.S. § 32-1637(1) and those additional skills that are obtained through subsequent nursing education and within the scope of practice of a LPN as determined by the Board.

C. A LPN shall:
1. Practice within the legal boundaries of practical nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C.19;
2. Demonstrate honesty and integrity;
3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and licensed practical nursing standards;
4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of practical nursing practice.
5. Maintain competence through ongoing learning and application of knowledge in practical nursing practice.
6. Protect confidential information unless obligated by law to disclose the information;
7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(24) and further specified in R4-19-403 and R4-19-814, to the Board;
8. Respect a client's rights, concerns, decisions, and dignity;
9. Maintain professional boundaries; and
10. Respect a client's property and the property of others.

D. In participating in the nursing process and implementing client care across the lifespan, a LPN shall:
1. Contribute to the assessment of the health status of clients by:
   a. Recognizing client characteristics that may affect the client's health status;
   b. Gathering and recording assessment data;
   c. Demonstrating attentiveness by observing, monitoring, and reporting signs, symptoms, and changes in client condition in an ongoing manner to the supervising registered nurse or physician;
2. Contribute to the development and modification of the plan of care by:
   a. Planning episodic nursing care for a client whose condition is stable or predictable;
   b. Assisting the registered nurse or supervising physician in identification of client needs and goals; and
   c. Determining priorities of care together with the supervising registered nurse or physician;
3. Implement aspects of a client's care consistent with the LPN scope of practice in a timely and accurate manner including:
   a. Following nurse and physician orders and seeking clarification of orders when needed;
   b. Administering treatments, medications, and procedures;
   c. Attending to client and family concerns or requests;
   d. Providing health information to clients as directed by the supervising RN or physician or according to an established educational plan;
   e. Promoting a safe client environment;
   f. Communicating relevant and timely client information with other health team members regarding:
      i. Client status and progress,
      ii. Client response or lack of response to therapies,
      iii. Significant changes in client condition, and
      iv. Client needs and special requests, and
   g. Documenting the nursing care the LPN provided;
4. Contribute to evaluation of the plan of care by:
   a. Gathering, observing, recording, and communicating client responses to nursing interventions; and
   b. Modifying the plan of care in collaboration with a registered nurse based on an analysis of client responses.

E. A LPN assigns and delegates nursing activities. The LPN shall:
1. Assign nursing care within the LPN scope of practice to other LPNs;
2. Delegate nursing tasks to unlicensed assistive personnel (UAPs). In maintaining accountability for the delegation, the LPN shall ensure that the:
   a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
   b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
   c. Results of the task are reasonably predictable;
   d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
   e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
   f. LPN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
   g. LPN provides supervision and feedback to the UAP; and
   h. LPN observes and communicates the outcomes of the delegated task.

Historical Note

Former Section III, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-42 renumbered as Section R4-19-401 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Subsection (C)(7) amended at request of Board, Office File No. M11-423, filed November 18, 2011 (Supp. 11-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (C)(7) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). A.R.S. Section reference updated under subsection (C)(7) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number

R16-186 (Supp. 16-3).

R4-19-402. Standards Related to Registered Nurse Scope of Practice

A. A registered nurse (RN) shall perform only those nursing activities for which the RN has been prepared through basic registered nursing education and those additional skills which are obtained through subsequent nursing education and within the scope of practice of an RN as determined by the Board.

B. A RN shall:
1. Practice within the legal boundaries of registered nursing within the scope of practice authorized by A.R.S. Title 32, Chapter 15 and 4 A.A.C. 19;
2. Demonstrate honesty and integrity;
3. Base nursing decisions on nursing knowledge and skills, the needs of clients, and registered nursing standards;
4. Accept responsibility for individual nursing actions, decisions, and behavior in the course of registered nursing practice;
5. Maintain competence through ongoing learning and application of knowledge in registered nursing practice;
6. Protect confidential information unless obligated by law to disclose the information;
7. Report unprofessional conduct, as defined in A.R.S. § 32-1601(24) and further specified in R4-19-403 and R4-19-814, to the Board;
8. Respect a client's rights, concerns, decisions, and dignity;
9. Maintain professional boundaries;
10. Respect a client's property and the property of others; and
11. Advocate on behalf of a client to promote the client's best interest.

C. In utilizing the nursing process to plan and implement nursing care for clients across the life-span, a RN shall:
1. Conduct a nursing assessment of a client in which the nurse:
   a. Recognizes client characteristics that may affect the client's health status;
   b. Gathers or reviews comprehensive subjective and objective data and detects changes or missing information;
   c. Applies nursing knowledge in the integration of the biological, psychological, and social aspects of the client's condition; and
   d. Demonstrates attentiveness by providing ongoing client surveillance and monitoring;
2. Use critical thinking and nursing judgment to analyze client assessment data to:
   a. Make independent nursing decisions and formulate nursing diagnoses; and
   b. Determine the clinical implications of client signs, symptoms, and changes, as either expected, unexpected, or emergent situations;
3. Based on assessment and analysis of client data, plan strategies of nursing care and nursing interventions in which the nurse;
   a. Identifies client needs and goals;
   b. Formulates strategies to meet identified client needs and goals;
   c. Modifies defined strategies to be consistent with the client's overall health care plan; and
   d. Prioritizes strategies based on client needs and goals;
4. Provide nursing care within the RN scope of practice in which the nurse:
   a. Administers prescribed aspects of care including treatments, therapies, and medications;
   b. Clarifies health care provider orders when needed;
   c. Implements independent nursing activities consistent with the RN scope of practice;
   d. Institutes preventive measures to protect client, others, and self;
   e. Intervenes on behalf of a client when problems are identified;
   f. Promotes a safe client environment;
   g. Attends to client concerns or requests;
   h. Communicates client information to health team members including:
      i. Client concerns and special needs;
      ii. Client status and progress;
      iii. Client response or lack of response to interventions; and
      iv. Significant changes in client condition; and
   i. Documents the nursing care the RN has provided;
5. Evaluate the impact of nursing care including the:
   a. Client's response to interventions;
   b. Need for alternative interventions;
   c. Need to communicate and consult with other health team members; and
   d. Need to revise the plan of care;
6. Provide comprehensive nursing and health care education in which the RN:
   a. Assesses and analyzes educational needs of learners;
   b. Plans educational programs based on learning needs and teaching-learning principles;
   c. Ensures implementation of an educational plan either directly or by delegating selected aspects of the education to other qualified persons; and
   d. Evaluates the education to meet the identified goals;

D. A RN assigns and delegates nursing activities. The RN shall:
1. Assign nursing care within the RN scope of practice to other RNs;
2. Assign nursing care to a LPN within the LPN scope of practice based on the RN's assessment of the client and the LPN's ability;
3. Supervise, monitor, and evaluate the care assigned to a LPN; and
4. Delegate nursing tasks to UAPs. In maintaining accountability for the delegation, an RN shall ensure that the:
   a. UAP has the education, legal authority, and demonstrated competency to perform the delegated task;
   b. Tasks delegated are consistent with the UAP's job description and can be safely performed according to clear, exact, and unchanging directions;
   c. Results of the task are reasonably predictable;
   d. Task does not require assessment, interpretation, or independent decision making during its performance or at completion;
   e. Selected client and circumstances of the delegation are such that delegation of the task poses minimal risk to the client and the consequences of performing the task improperly are not life-threatening;
   f. RN provides clear directions and guidelines regarding the delegated task or, for routine tasks on stable clients, verifies that the UAP follows each written facility policy or procedure when performing the delegated task;
   g. RN provides supervision and feedback to the UAP; and
   h. RN observes and communicates the outcomes of the delegated task.

Historical Note

Former Section III, Part I; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-43 renum-

bered as Section R4-19-402 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Section repealed, new Section made by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Subsection (B)(7) amended at request of Board, Office File No. M11-423, filed November 18, 2011 (Supp. 11-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (B)(7) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). A.R.S. Section reference updated under subsection (B)(7) under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-403. Unprofessional Conduct

For purposes of A.R.S. § 32-1601(24)(d), any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public includes one or more of the following:

1. A pattern of failure to maintain minimum standards of acceptable and prevailing nursing practice;
2. Intentionally or negligently causing physical or emotional injury;
3. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any family member of a patient or resident;
4. Engaging in sexual conduct with a patient, resident, or any family member of a patient or resident who does not have a pre-existing relationship with the nurse, or any conduct in the work place that a reasonable person would interpret as sexual;
5. Abandoning or neglecting a patient who requires immediate nursing care without making reasonable arrangement for continuation of care;
6. Removing a patient's life support system without appropriate medical or legal authorization;
7. Failing to maintain for a patient record that accurately reflects the nursing assessment, care, treatment, and other nursing services provided to the patient;
8. Falsifying or making a materially incorrect, inconsistent, or unintelligible entry in any record:
   a. Regarding a patient, health care facility, school, institution, or other work place location; or
   b. Pertaining to obtaining, possessing, or administering any controlled substance as defined in the federal Uniform Controlled Substances Act, 21 U.S.C. 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27;
9. Failing to take appropriate action to safeguard a patient's welfare or follow policies and procedures of the nurse's employer designed to safeguard the patient;
10. Failing to take action in a health care setting to protect a patient whose safety or welfare is at risk from incompetent health care practice, or to report the incompetent health care practice to employment or licensing authorities;
11. Failing to report to the Board a licensed nurse whose work history includes conduct, or a pattern of conduct, that leads to or may lead to an adverse patient outcome;
12. Assuming patient care responsibilities that the nurse lacks the education to perform, for which the nurse has failed to maintain nursing competence, or that are outside the scope of practice of the nurse;
13. Failing to supervise a person to whom nursing functions are delegated;
14. Delegating services that require nursing judgment to an unauthorized person;
15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, employer, co-worker, or member of the public.
16. Removing, without authorization, a narcotic, drug, controlled substance, supply, equipment, or medical record from any health care facility, school, institution, or other work place location;
17. A pattern of using or being under the influence of alcohol, drugs, or a similar substance to the extent that judgment may be impaired and nursing practice detrimentally affected, or while on duty in any health care facility, school, institution, or other work location;
18. Obtaining, possessing, administering, or using any narcotic, controlled substance, or illegal drug in violation of any federal or state criminal law, or in violation of the policy of any health care facility, school, institution, or other work location at which the nurse practices;
19. Providing or administering any controlled substance or prescription-only drug for other than accepted therapeutic or research purposes;
20. Engaging in fraud, misrepresentation, or deceit in taking a licensing examination or on an initial or renewal application for a license or certificate;
21. Impersonating a nurse licensed or certified under this Chapter;
22. Permitting or allowing another person to use the nurse's license for any purpose;
23. Advertising the practice of nursing with untruthful or misleading statements;
24. Practicing nursing without a current license or while the license is suspended;
25. Failing to:
    a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. § 32-1664, or
    b. Respond to a subpoena issued by the Board;
26. Making a written false or inaccurate statement to the Board or the Board's designee in the course of an investigation;
27. Making a false or misleading statement on a nursing or health care related employment or credential application concerning previous employment, employment experience, education, or credentials;
28. If a licensee or applicant is charged with a felony or a misdemeanor involving conduct that may affect patient safety, failing to notify the Board in writing, as required under A.R.S. § 32-3208, within 10 days of being charged. The licensee or applicant shall include the following in the notification:
    a. Name, address, telephone number, social security number, and license number, if applicable;
    b. Date of the charge; and
    c. Nature of the offense;
29. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The nurse or applicant shall include the following in the notification:
    a. Name, address, telephone number, social security number, and license number, if applicable;
    b. Date of the conviction; and
    c. Nature of the offense;
30. For a registered nurse granted prescribing privileges, any act prohibited under R4-19-511(D); or

31. Practicing in any other manner that gives the Board reasonable cause to believe the health of a patient or the public may be harmed.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-44 repealed, new Section R4-19-44 adopted effective May 9, 1984 (Supp. 84-3). Amended by adding Paragraphs 18 through 22 effective July 16, 1984 (Supp. 84-4). Former Section R4-19-44 renumbered and amended as Section R4-19-403 effective February 21, 1986 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-404. Re-issuance or Subsequent Issuance of License

A. The Board may restore a license to a nurse whose license has been suspended after the period of suspension if the licensee provides written evidence that all requirements or conditions prescribed or ordered in the consent agreement or Board order for suspension have been met to the satisfaction of the Board. The Board may place conditions or limitations on the restored license. The license of a nurse who fails to provide such evidence of fulfilling the requirements or conditions prescribed by the Board shall remain on suspended status until such submission and acceptance by the Board.

B. A person whose nursing license is denied, revoked, or voluntarily surrendered under A.R.S. § 32-1663 may apply to the Board to issue or re-issue the license:
1. Five years from the date of denial or revocation, or
2. In accordance with the terms of a voluntary surrender agreement.

C. A person who applies for issuance or re-issuance of a license under the conditions of subsection (B) is subject to the following terms and conditions:
1. The person shall submit a written application for issuance or re-issuance of the license that contains substantial evidence that the basis for surrendering, denying, or revoking the license has been removed and that the issuance or re-issuance of the license will not be a threat to public health or safety.
2. Safe practice.
   a. Under A.R.S. § 32-1664(F), the Board for reasonable cause may require a combination of mental, physical, nursing competency, psychological, or psychiatric evaluations, or any combination of evaluations, reports, and affidavits that the Board considers necessary to determine the person's competence and conduct to safely practice nursing.
   b. Under A.R.S. 32-1664(K) the Board may issue subpoenas and compel the attendance of witnesses and the production of records and documentary evidence relevant to the person's ability to safely practice nursing.
3. After receipt of the application, the information required under subsection (C)(2), and the completion of an investigation, the Board shall place the application on the agenda of a regularly scheduled Board meeting.
4. After consideration of the application and any information required under subsection (C)(2),the Board may:
   a. Grant the license with or without conditions or limitations;
   b. If other licensure requirements have been met, grant, with or without conditions, a temporary license for the sole purpose of allowing the applicant to successfully complete an approved nurse refresher course; or
   c. Deny the license if the Board determines that licensure might be harmful or dangerous to the health of a patient or the public.
5. If the Board orders a refresher course described in subsection (C)(4)(b) the Board shall consider the applicant's performance in the approved refresher course and any other evidence, if available, of the applicant's safety to practice, and either deny the license under subsection (C)(4)(c) or grant the license with or without conditions or limitations.
6. An applicant who is denied issuance or re-issuance of a license shall have 30 days from the date of issuance of the notice of denial from the Board to file a written request for hearing with the Board. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Former Section R4-19-30 renumbered and amended as Section R4-19-45 effective February 20, 1980 (Supp. 80-1). Former Section R4-19-45 renumbered as Section R4-19-404 (Supp. 86-1). Section repealed, new Section adopted effective July 19, 1995 (Supp. 95-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

R4-19-405. Board-ordered Evaluations

A. Under A.R.S. § 32-1664(F), the Board may order a licensee or CNA certificate-holder to undergo an evaluation by an independent qualified evaluator for the purposes of determining the licensee's or certificate holder's safety and competence to practice. Evaluations may be in the areas of:
1. Nursing knowledge or skills or both;
2. Mental functioning, including but not limited to neuropsychological evaluation, and other cognition evaluations;
3. Medical status including but not limited to medical review of drug screen results, chronic pain evaluation, physical examination, and biological testing;
4. Psychiatric or psychological status including but not limited to substance abuse evaluation, boundary or sexual misconduct evaluations, and psychological testing; or
5. Other similar evaluations that the Board determines are necessary to evaluate a licensee or certificate holder's ability to safely practice.

B. Before making the decision to order the evaluation, the Board shall review the allegations and investigative findings.

C. The Board retains the discretion to use an evaluator based on the evaluator's licensure history, the Board's past experience with the evaluator, and the quality of the evaluation provided. Before conducting a Board-ordered evaluation, a potential evaluator shall submit documentation that the evaluator:

1. Possesses expertise and educational credentials in the area that the Board has ordered an evaluation;
2. Holds a license or certificate in good standing with a licensing or certifying board located in the United States and discloses any past licensure disciplinary actions and criminal history;
3. Will provide equipment and environmental conditions necessary to conduct a valid evaluation;
4. Has no current or past treatment, collegial, or social relationship with the licensee or certificate holder, any family member of the licensee or certificate holder, or the licensee's or certificate holder's legal counsel;
5. Will not enter into a treatment relationship with the licensee or certificate holder unless the relationship is unavoidable due to geographical location or the specific expertise of the evaluator; and
6. Agrees to keep information provided by the Board under subsection (D) confidential as evidenced by a signed confidentiality agreement provided by the Board.

D. Upon receipt of the evaluator's signed confidentiality agreement, the Board may provide confidential investigative information and documents to the evaluator for the purpose of disclosing the reason for the evaluation, the focus of the evaluation, and the conduct causing the Board to order the evaluation including:
1. The complaint and all information that has been received during the investigation of the complaint. Documents may include but are not limited to employment records, medical records, arrest records, conviction and sentencing records, excluding FBI fingerprint results, drug screen results, pharmacy profiles, witness statements, past licensure history, and a summary of information obtained during investigative interviews; and
2. The specific questions for which the Board is seeking answers; and

E. The evaluator shall provide the following information to the Board:
1. A professional report that is objective, thorough, timely, accurate, and defensible;
2. Evaluation findings including diagnosis if appropriate and assessment of ability to practice safely;
3. Recommendations for further evaluation, treatment, and remediation; and
4. Suggestions for assuring safe practice and compliance with treatment and remediation recommendations, if any.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-46 renumbered and amended as Section R4-19-405 effective February 21, 1986 (Supp. 86-1). Repealed effective July 19, 1995 (Supp. 95-3). New Section made by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4).

ARTICLE 5. ADVANCED PRACTICE REGISTERED NURSING

R4-19-501. Roles and Population Foci of Advanced Practice Registered Nursing (APRN); Certification Programs

A. The Board recognizes the following APRN roles;
1. Registered nurse practitioner (RNP) in a population focus including Certified Nurse Midwife as a population focus of RNP;
2. Clinical Nurse Specialist (CNS) in a population focus; and
3. Certified Registered Nurse Anesthetist (CRNA).

B. RNPs and CNSs shall practice within one or more population foci, consistent with their education and certification. Population foci include:
1. Family-individual across the life span;
2. Adult-gerontology primary or acute care;
3. Neonatal;
4. Pediatric primary or acute care;
5. Women's health-gender related;
6. Psychiatric-mental health;
7. For Certified Nurse Midwives, women's health gender related including childbirth and neonatal care;
8. Other foci that have been recognized by the Board previously and new foci that meet the following conditions:
   a. There is an accredited educational program and a national certifying process that meets the requirements of subsection (C); and
   b. The focus is broad enough for an educational program to be developed that prepares a registered nurse to function both within the scope of practice of the role and population focus.

C. The Board shall accept advanced practice certifications from programs that meet the following qualifications:
1. The certification program:
   a. Is accredited by the National Commission for Certifying Agencies, the Accreditation Board for Specialty Nursing Certification, or an equivalent organization as determined by the Board;
   b. Establishes educational requirements for certification that are consistent with the requirements in R4-19-505;
   c. Has an application process and credential review that requires an applicant to submit original source documentation of the applicant's education and clinical practice in the advanced practice role and population focus, if applicable, for which certification is granted; and
   d. Is national in the scope of its credentialing.
2. The certification program uses an examination as a basis for certification in the advanced practice role and population focus, as applicable that meets all of the following criteria:
   a. The examination is based upon job analysis studies conducted using standard methodologies acceptable to the testing community both initially and every five years;
   b. The examination assesses entry-level practice in the advanced practice role and population focus, if applicable;
   c. The examination assesses the knowledge, skills, and abilities essential for the delivery of safe and effective advanced nursing care to clients;
   d. Examination items are reviewed for content validity, cultural sensitivity, and correct scoring using an established mechanism, both before first use and periodically; items are reviewed for currency at least every three years;
   e. The examination is evaluated for psychometric performance and conforms to psychometric standards that are routinely utilized for other types of high-stakes testing;
   f. The passing standard is established using accepted psychometric methods and is re-evaluated periodically;
   g. Examination security is maintained through established procedures;
   h. A re-take policy is in place; and

i. Conditions for taking the certification examination are consistent with standards of the testing community;
3. Certification is issued upon passing the examination and meeting all other certification requirements;
4. The certification program periodically provides for recertification that includes review of qualifications and continued competence;
5. The certification program provides timely communication to the Board regarding licensee or applicant certification status, changes in an individual's certification status, exam results and changes in the certification program, including qualifications, test plan, and scope of practice; and
6. The certification program has an evaluation process to provide quality assurance in its certificate program.

D. The Board shall determine whether a certification program meets the requirements of this Section. The following certification programs meet the requirements of this Section as of the effective date of this rulemaking:
1. For RNP:
a. American Academy of Nurse Practitioner certification programs;
i. Adult nurse practitioner,
ii. Family nurse practitioner,
iii. Gerontologic nurse practitioner,
iv. Adult health-gerontological nurse practitioner.
b. American Nurses Credentialing Center certification programs:
i. Acute care nurse practitioner (adult/gerontology),
ii. Adult nurse practitioner,
iii. Family nurse practitioner,
iv. Gerontological nurse practitioner,
v. Pediatric nurse practitioner,
vi. Adult psychiatric and mental health nurse practitioner,
vii. Family psychiatric and mental health nurse practitioner,
viii. Adult health-gerontological nurse practitioner,
c. Pediatric Nursing Certification Board certification programs:
i. Pediatric nurse practitioner primary care,
ii. Pediatric nurse practitioner acute care,
d. National Certification Corporation for Obstetric, Gynecological, and Neonatal Nursing Specialties certification programs;
i. Women's health nurse practitioner,
ii. Neonatal nurse practitioner,
e. For a nurse-midwife, the American Midwifery Certification Board certification program in nurse midwifery,
f. AACN Certification Corporation certification programs:
i. Adult acute care nurse practitioner,
ii. Adult-gerontology acute care nurse practitioner,
2. For CNS:
a. AACN Certification Corporation certification programs:
i. Adult acute and critical care CNS,
ii. Pediatric acute and critical care CNS,
iii. Neonatal acute and critical care CNS,
b. American Nurses Credentialing Center certification:
i. Adult psychiatric-mental health CNS,
ii. Family psychiatric-mental health CNS,
iii. Gerontological CNS,
iv. Adult health CNS,
v. Pediatric CNS.
3. For CRNA, National Board of Certification and Recertification for Nurse Anesthetists.

E. The Board shall approve a certification program that meets the criteria established in this Section. An entity that seeks approval of a certification program and is denied approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Former Section IV, Part I. Former Section R4-19-53 renumbered as Section R4-19-501 (Supp. 86-1). Former Section R4-19-501 renumbered to R4-19-502, new Section R4-19-501 adopted effective November 18, 1994 (Supp. 94-4). Amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 7 A.A.R. 3213, effective July 12, 2001 (Supp. 01-3). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-502. Requirements for APRN Programs

A. An educational institution or other entity that offers an APRN program in this state for RNP or CNS roles shall ensure that the program:
1. Is offered by or affiliated with a college or university that is accredited under A.R.S. § 32-1644;
2. For new programs, the college or university offering the program has at least one additional nationally accredited nursing program as defined in R4-19-101 or otherwise provides substantial evidence of the ability to attain national APRN program accreditation for all graduating cohorts;
3. Is a formal educational program, that is part of a masters or doctoral program or a post-masters program in nursing with a concentration in an advanced practice registered nursing role and population focus under R4-19-501;
4. Is nationally accredited, or has achieved candidacy status for national accreditation by an approved national nursing accrediting agency as defined in R4-19-101;
5. Offers a curriculum that covers the scope of practice for both the role of advanced practice as specified in A.R.S. § 32-1601 and the population focus including;
a. Three separate graduate level courses in:
i. Advanced physiology and pathophysiology, including general principles across the lifespan;
ii. Advanced health assessment, which includes assessment of all human systems, advanced assessment techniques, concepts and approaches;
iii. Advanced pharmacology, which includes pharmacodynamics, pharmacokinetics and pharmacotherapeutics of all broad category agents;
b. Diagnosis and management of diseases across practice settings including diseases representative of all systems;
c. Preparation that provides a basic understanding of the principles for decision making in the identified role;
d. Preparation in the core competencies for the identified APRN role including legal, ethical and professional responsibilities; and

e. Role preparation in an identified population focus under R4-19-501.

6. Verifies that each student has an unencumbered license to practice as an RN in the state of clinical practice;
7. Includes a minimum of 500 hours of faculty supervised clinical practice (programs that prepare students for more than one role or population focus shall have 500 hours of clinical practice in each role and population focus);
8. Notifies the Board of any changes in hours of clinical practice, accreditation status, denial or deferral of accreditation or program administrator and responds to Board requests for information;
9. Has financial resources sufficient to support accreditation standards and the educational goals of the program;
10. Establishes academic, professional, and conduct standards that determine admission to the program, progression in the program, and graduation from the program that are consistent with sound educational practices and recognized standards of professional conduct;
11. Establishes provisions for advanced placement for individuals holding a graduate degree in nursing who are seeking education in an APRN role and population focus, provided that advanced placement students master the same APRN competencies as students in the graduate-level APRN program; and
12. Provides the Board an application for approval under the provisions of R4-19-209(B) before making changes to the:
    a. Scope of the program, or
    b. Level of educational preparation provided.

B. A CNS or RNP program shall appoint the following personnel:

1. An APRN program administrator who:
    a. Holds a current unencumbered RN license or multistate privilege to practice in Arizona and a current unencumbered APRN certificate issued by the Board;
    b. Holds an earned doctorate in nursing or health-related field if appointed after the effective date of this Section;
    c. Has at least two years clinical experience as an APRN; and
    d. Holds current national certification as an APRN.
2. A lead faculty member who is educated and certified both nationally and by the Board in the same role and population focus to coordinate the educational component for the role and population focus in the advanced practice registered nursing program.
3. Nursing faculty to teach any APRN course that includes a clinical learning experience who have the following qualifications:
    a. A current unencumbered RN license or multi-state privilege to practice registered nursing in Arizona;
    b. A current unencumbered Arizona APRN certificate,
    c. A graduate degree in nursing or a health related field in the population focus,
    d. Two years of APRN clinical experience, and
    e. Current knowledge, competence and certification as an APRN in the role and population focus consistent with teaching responsibilities.
4. Adjunct or part-time clinical faculty employed solely to supervise clinical nursing experiences shall meet all of the faculty qualifications for the APRN program they are teaching.
5. Interdisciplinary faculty who teach non-clinical courses shall have advanced preparation in the areas of course content.
6. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences, but not to replace faculty. A clinical preceptor shall be approved by program administration or faculty and:
    a. Hold a current unencumbered license or multistate privilege to practice as a registered nurse or physician in the state in which the preceptor practices or, if employed by the federal government, holds a current unencumbered RN or physician license in the United States;
    b. Have at least one year clinical experience as a physician or an advanced practice nurse
    c. Practice in a population focus comparable to that of the APRN program;
    d. For nurse preceptors, have at least one of the following:
        i. Current national certification in the advanced practice role and population focus of the course or program in which the student is enrolled;
        ii. Current Board certification in the advanced practice role and population focus of the course or program in which the student is enrolled; or
        iii. If an advanced practice preceptor cannot be found who meets the requirements of subsection (B)(6)(d)(i) or (ii), educational and experiential qualifications that will enable the preceptor to precept students in the program, as determined by the nursing program and approved by the Board.

C. An entity that offers a CRNA program in Arizona shall maintain full national program accreditation with no limitations from the Council on Accreditation of Nurse Anesthesia Educational Programs or an equivalent agency approved by the Board. The program shall notify the Board of all program accreditation actions within 30 days of official notification by the accrediting agency.

Historical Note

Former Section IV, Part II; Amended effective February 20, 1980 (Supp. 80-1). Former Section R4-19-54 repealed, new Section R4-19-54 adopted effective July 20, 1981 (Supp. 81-4). Former Section R4-19-54 renumbered as Section R4-19-502 (Supp. 86-1). Section repealed, new Section R4-19-502 renumbered from R4-19-501 and Section heading amended effective November 18, 1994 (Supp. 94-4). Section repealed, new Section R4-19-502 adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-503. Application for Approval of an Advanced Practice Registered Nursing Program; Approval by Board

A. An administrator of an educational institution that proposes to offer a CNS or RNP program shall submit an application that includes all of the following information to the Board:

1. Role, population focus that meets the criteria in R4-19-501 program administrator and lead faculty member as required in R4-19-502(B);
2. Name, address, and evidence verifying institutional accreditation status of the affiliated educational institution and program accreditation status of current nursing programs offered by the educational institution;
3. The mission, goals, and objectives of the program consistent with generally accepted standards for advanced prac-

tice education in the role and population focus of the program;
4. List of the required courses, and a description, measurable objectives, and content outline for each required course consistent with curricular requirements in R4-19-502;
5. A proposed time schedule for implementation of the program and attaining national accreditation;
6. The total hours allotted for both didactic instruction and supervised clinical practicum in the program;
7. A program proposal that provides evidence of sufficient financial resources, clinical opportunities and available faculty and preceptors for the proposed enrollment and planned expansion;
8. A self-study that provides evidence of compliance with R4-19-502;

B. An entity that wishes to offer a CRNA program shall submit evidence of current accreditation by the Council on Accreditation of Nurse Anesthesia Education Programs or an equivalent organization.

C. The Board shall approve an advanced practice registered nursing program if approval is in the best interest of the public and the program meets the requirements of this Article. The Board may grant approval for a period of two years or less to an advanced practice nursing program where the program meets all the requirements of this Article except for accreditation by a national nursing accrediting agency, based on the program's presentation of evidence that it has applied for accreditation and meets accreditation standards.

D. An educational institution or entity that is denied approval of an advanced practice registered nursing program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying its application for approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

E. Approval of an advanced practice registered nursing program expires 12 months from the date of approval if a class of students is not admitted within that time.

Historical Note

Former Section IV, Part III; Amended effective Nov. 17, 1978 (Supp. 78-6). Amended effective February 20, 1980 (Supp. 80-1). Amended by adding subsection (F) effective July 20, 1981 (Supp. 81-4). Amended by adding subsection (G) effective September 15, 1982 (Supp. 82-5). Former Section R4-19-55 renumbered as Section R4-19-503 (Supp. 86-1). Former Section R4-19-503 repealed, new Section adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-503 renumbered to Section R4-19-504; new Section R4-19-503 adopted effective November 25, 1996 (Supp. 86-1). Amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-504. Notice of Deficiency; Unprofessional Program Conduct

A. The Board may periodically survey an advanced practice registered nursing program under its jurisdiction to determine whether criteria for approval are being met.

B. The Board shall, upon determining that an advanced practice registered nursing program is not in compliance with this Article, provide to the program administrator a written notice of deficiencies that establishes a reasonable time, based upon the number and severity of deficiencies, to correct the deficiencies. The time for correction may not exceed 18 months.
1. The program administrator shall, within 30 days from the date of service of the notice of deficiencies, consult with the Board or designated Board representative and, after consultation, file a plan to correct each of the identified deficiencies.
2. The program administrator may, within 30 days from the date of service of the notice of deficiencies, submit a written request for a hearing before the Board to appeal the Board's determination of deficiencies. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
3. If the Board's determination is not appealed or is upheld upon appeal, the Board may conduct periodic evaluations of the program during the time of correction to determine whether the deficiencies have been corrected.

C. The Board shall, following a Board-conducted survey and report, rescind the approval or limit the ability of a program to admit students if the program fails to comply with R4-19-502 within the time set by the Board in the notice of deficiencies provided to the program administrator.
1. The Board shall serve the program administrator with a written notice of proposed rescission of approval or limitation of admission of students that states the grounds for the rescission or limitation. The program administrator has 30 days to submit a written request for a hearing to show cause why approval should not be rescinded or admissions limited. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.
2. Upon the effective date of a decision to rescind program approval, the affected advanced practice registered nursing program shall immediately cease operation and be removed from the official approved-status listing. An advanced practice registered nursing program that is ordered to cease operations shall assist currently enrolled students to transfer to an approved nursing program.

D. A disciplinary action, denial of approval, or notice of deficiency may be issued against an RNP or CNS nursing program for any of the following acts of unprofessional conduct:
1. Failure to maintain minimum standards of acceptable and prevailing educational practice;
2. For a program that was served with a notice of deficiencies within the preceding three years and timely corrected the noticed deficiencies, subsequent noncompliance with the standards in this Article;
3. Utilization of students to meet staffing needs in health care facilities;
4. Non-compliance with the program or parent institution mission or goals, program design, objectives, or policies;
5. Failure to provide the variety and number of clinical learning opportunities necessary for students to achieve program outcomes or minimal competence;
6. Student enrollments without adequate faculty, facilities, or clinical experiences;
7. Ongoing or repetitive employment of unqualified faculty;
8. Failure to comply with Board requirements within designated time-frames;
9. Fraud or deceit in advertising, promoting or implementing a nursing program;
10. Material misrepresentation of fact by the program in any advertisement, application or information submitted to the Board;
11. Failure to allow Board staff to visit the program or conduct an investigation;
12. Any other evidence that gives the Board reasonable cause to believe the program’s conduct may be a threat to the

safety and well-being of students, faculty or potential patients.

Historical Note

Former R4-19-504 renumbered to R4-19-505; new R4-19-504 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-505. Requirements for Initial APRN Certification

A. An applicant for certification as an advanced practice registered nurse, shall:

1. Hold a current Arizona registered nurse (RN) license in good standing or an RN license in good standing from a compact party state with multistate privileges; and
2. Submit a verified application to the Board on a form provided by the Board that provides all of the following:
   a. Full legal name and all former names used by the applicant;
   b. Current mailing address, including primary state of residence and telephone number;
   c. Place and date of birth:
   d. RN license number, application for RN license, or copy of a multistate compact RN license;
   e. Social security number for an applicant who lives or works in the United States;
   f. Current e-mail address;
   g. Educational background, including the name and location of basic nursing program, the institution that awarded the highest degree held and any and all advanced practice registered nursing education programs or schools attended including the number of years attended, the length of each program, the date of graduation or completion, and the type of degree or certificate awarded;
   h. Role and population focus, as applicable for which the applicant is applying;
   i. Current employer or practice setting, including address, position, and dates of service, if employed or practicing in nursing or health care;
   j. Evidence of national certification or recertification as an advanced practice registered nurse in the role and population focus, if applicable, of the application and by a certification program that meets the requirements of R4-19-501(C). The applicant shall include the name of the certifying organization, population focus, certification number, date of certification, and expiration date;
   k. For applicants holding a multistate compact RN license in a state other than Arizona:
      i. State of original licensure and license number;
      ii. State of current compact RN license, license number and expiration date;
      iii. Date of taking RN licensure exam and name of exam;
      iv. Whether the applicant ever submitted an application for and was granted an Arizona license and, if applicable, the date of Arizona licensure;
      v. Other information related to the nurse's practice for the purpose of collecting nursing workforce data; and
      vi. State of licensure and license number of all RN licenses held,
   l. Responses regarding the applicant's background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing regulatory agency in the United States or its territories;
      ii. Undesignated offense and felony charges, convictions and plea agreements including deferred prosecution;
      iii. Misdemeanor charges, convictions, and plea agreements, including deferred prosecution, that are required to be reported under A.R.S. § 32-3208;
      iv. Actions taken on a nursing license by any other state;
      v. Unprofessional conduct as defined in A.R.S. § 32-1601;
      vi. Substance use disorder within the last five years;
      vii. Current participation in an alternative to discipline program in any other state; and
   m. Information that the applicant meets the criteria in R4-19-506(A) or (C).
3. Submit a fingerprint card on a form provided by the Board or prints if the applicant has not submitted fingerprints to the Board within the last two years.
4. Submit an official transcript from an institution accredited under A.R.S. § 32-1644 either sent directly from the institution or obtained from a Board-approved database that provides evidence of:
   a. A graduate degree with a major in nursing for RNP and CNS Applicants, or
   b. A graduate degree associated with a CRNA program for a CRNA applicant.
5. The applicant shall cause the program to provide the Board with evidence of completion of an APRN program in the role and population focus of the application through submission of an official letter or other official program document sent either directly from the program, or from a Board-approved data base. The APRN program shall meet one of the following criteria during the period of the applicant's attendance in the program:
   a. The program was part of a graduate degree, or post-masters program at an institution accredited under A.R.S. § 32-1644; or
   b. The program was approved or recognized in the U.S jurisdiction of program location for the purpose granting APRN licensure or certification.
6. For an applicant who completed an advanced practice or graduate program in a foreign jurisdiction, submit an evaluation from the Commission on Graduates of Foreign Nursing Schools or a Board-approved credential evaluation service that indicates the applicant's program is comparable to a U.S. graduate nursing or APRN program.
7. Submit the required fee.

B. If the applicant satisfies all other requirements, the Board shall continue to certify:

1. An RNP without a graduate degree with a major in nursing if the applicant:
   a. Meets all other requirements for certification; and
   b. Ensures that the U.S. jurisdiction of an applicant's previous RNP licensure or certification submits evidence of the applicant's certification or licensure in the nurse practitioner role and population focus that either is current or was current at least six months before the application was received by the Board, and was originally issued:
      i. Before January 1, 2001, if the RNP applicant lacks a graduate degree; or

ii. Before November 13, 2005 if the RNP's graduate degree is in a health-related area other than nursing.

2. An RNP or CNS applicant without evidence of national certification who received initial advanced practice certification or licensure in another state not later than July 1, 2004 and provides evidence, directly from the jurisdiction, that the certification or licensure is current.
3. A CNS applicant without evidence of completion of a CNS program who received initial certification or advanced practice licensure in this or another state not later than November 13, 2005 and provides evidence, directly from the jurisdiction, that the certificate or license is current.
4. A CRNA who completed a CRNA program before the effective date of this Section without evidence of a graduate degree.
5. A CNS applicant who completed a women's health clinical nurse specialist program that was part of a graduate degree in nursing program under subsection (A), without evidence of national certification upon submission of the following:
   a. A description of the applicant's scope of practice that is consistent with A.R.S. § 32-1601(7);
   b. One of the following:
      i. A letter from a faculty member who supervised the applicant during the graduate program attesting to the applicant's competence to practice within the defined scope of practice;
      ii. A letter from a current supervisor verifying the applicant's competence in the defined scope of practice; or
      iii. A letter from a physician, RNP, or CNS who has worked with the applicant within the past two years attesting to the applicant's competence in the defined scope of practice; and
   c. A form verifying that the applicant has practiced a minimum of 500 hours in the population focus within the past two years, which may include clinical practice time in a CNS program.

C. The Board shall issue a certificate to practice as an RNP in a population focus, a CNS in a population focus, or a registered nurse anesthetist to a registered nurse who meets the criteria in this Section. An applicant who is denied a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective February 20, 1980 (Supp. 80-1). Former Section R4-19-56 repealed, new Section R4-19-56 adopted effective July 16, 1984 (Supp. 84-4). Former Section R4-19-56 renumbered as Section R4-19-504 (Supp. 86-1). Former Section R4-19-504 renumbered to R4-19-505, new Section R4-19-504 adopted effective November 18, 1994 (Supp. 94-4). Former Section R4-19-504 renumbered to Section R4-10-505; new Section R4-19-504 renumbered from R4-19-503 and amended effective November 25, 1996 (Supp. 96-4). Amended effective January 10, 1997 (Supp. 97-1). Amended by final rulemaking at 5 A.A.R. 3911, effective September 28, 1999 (Supp. 99-3). Former R4-19-505 renumbered to R4-19-508; new R4-19-505 renumbered from R4-19-504 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in subsection (A)(7)(a) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under subsection (B)(5)(a), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-506. Expiration of APRN Certificate; Practice Requirement; Renewal

A. An advanced practice certificate issued after July 1, 2004, expires when the certificate holder's RN license expires. Certificates issued on or before July 1, 2004, or those issued without proof of national certification under R4-19-505(B)(5) and (B)(2) do not expire unless the RN license expires under A.R.S. § 32-1642 or the nurse has not practiced advanced practice nursing at the applicable level of certification for a minimum of 960 hours in the five years before the date the application is received. This requirement is satisfied if the applicant verifies that the applicant has:

1. Completed an advanced practice nursing education program within the past five years; or
2. Practiced for a minimum of 960 hours within the past five years where the nurse:
   a. Worked for compensation or as a volunteer, as an APRN and performed one or more acts under A.R.S. § 32-1601(7) for a CNS, A.R.S. § 32-1601(20) for an RNP or A.R.S. § 32-1634.04 for a CRNA; or
   b. Held a position for compensation or as a volunteer that required, preferred or recommended, in the job description, the level of advanced practice certification being sought or renewed.

B. A registered nurse requesting renewal of an advanced practice certificate or an RNP certificate issued after July 1, 2004 shall provide evidence of current national certification or recertification under R4-19-505(A)(2)(j). This provision does not apply to a CNS granted a waiver of certification.

C. An advanced practice nurse who does not satisfy the practice requirement of subsection (A) shall complete coursework or continuing education activities at the graduate or advanced practice level that include, at minimum, 45 contact hours of advanced pharmacology and 45 contact hours in a subject or subjects related to the role and population focus of certification. Upon completion of the coursework, the nurse shall engage in a period of precepted clinical practice as specified in this subsection;

1. Precepted clinical practice shall be directly supervised by an advanced practice nurse in the same role and population focus as the certification being renewed or a physician who engages in practice with the same population focus as the certification being renewed.
2. Practice hours completed during the time-frame specified below may be applied to reduce the number of precepted clinical practice hours, except that in no case shall the hours be reduced by more than half the requirement. The nurse shall complete hours according to the following schedule:
   a. 300 hours if the applicant has practiced less than 960 hours in only the last five years;
   b. 600 hours if the applicant has not practiced 960 hours in the last five years, but has practiced at least 960 hours in the last six years;

c. 1000 hours if the applicant has not practiced at least 960 hours in the last six years, but has practiced 960 hours in the last seven to 10 years; or
d. If the nurse has not practiced 960 hours of advanced practice nursing in the role and population focus being renewed in more than 10 years, complete a program of study as recommended by an approved advanced practice nursing program that includes, at minimum, 500 hours of faculty supervised clinical practice in the role and population focus of certification. An applicant who qualifies for any option in subsection (C)(2)(a) through (c) may complete the requirements of this subsection to satisfy the practice requirement.

D. An applicant who, in addition to not meeting the requirements for continued APRN certification, does not meet the requirements for RN renewal, shall fulfill all RN renewal requirements before satisfying the requirements of this Section.

E. The Board shall renew a certificate to practice as a registered nurse practitioner in a population focus, a clinical nurse specialist in a population focus, or a registered nurse anesthetist for a registered nurse who meets the criteria in this Section. An applicant who is denied renewal of a certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Section R4-19-506 renumbered from R4-19-505 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-506 renumbered to R4-19-510, new Section R4-19-506 adopted effective November 25, 1996 (Supp. 96-4). Former R4-19-506 renumbered to R4-19-510; new Section R4-19-506 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citations in subsection (A)(2)(a) were updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section references updated under subsection (A)(2)(a), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-507. Temporary Advanced Practice Certificate; Temporary Prescribing and Dispensing Authority

A. Based on the registered nurse's qualifications, the Board may issue a temporary certificate to practice as a registered nurse practitioner or a clinical nurse specialist in a population focus or a registered nurse anesthetist. A registered nurse who is applying for a temporary certificate shall:
1. Apply for certification as an advanced practice nurse;
2. Submit an application for a temporary certificate;
3. Demonstrate authorization to practice as a registered nurse in Arizona on either a permanent or temporary Arizona license in good standing or a multistate compact privilege;
4. Meet all requirements of R4-19-505 or meet the requirements of R4-19-505 with the exception of national certification for RNP and CNS applicants unless exempt under R4-19-505(B); and
5. Submit evidence that the applicant:
   a. Has applied for and is eligible to take an approved national advanced practice certification exam in the role and population focus of the application;
   b. Has requested that the certification program transmit all exam results directly to the Board; or
   c. For a CRNA, holds national certification according to R4-19-501.

B. If an applicant fails to meet criteria for national advanced practice certification or has failed a certification exam, the applicant is not eligible for a temporary certificate.

C. The Board may issue temporary prescribing and dispensing authority for RNP applicants, if the applicant:
1. Meets all application requirements for temporary certification in this Section,
2. Applies for and meets all requirements for prescribing and dispensing authority under R4-19-511,
3. Has been certified or licensed as a nurse practitioner or nurse midwife with prescribing and dispensing authority in the same role and population focus in another state or territory of the United States,
4. Either holds current national certification as a registered nurse practitioner or nurse midwife in the population focus of the application or is exempt from national certification under R4-19-505(B), and
5. Meets the practice requirement of R4-19-506(A)(2).

D. Temporary certification as an advanced practice nurse and temporary prescribing and dispensing authority expire in six months and may be renewed for an additional six months for good cause. Good cause means reasons beyond the control of the temporary certificate holder such as unavoidable delays in obtaining information required for certification.

E. Notwithstanding subsection (D), the Board shall withdraw a temporary advanced practice certificate and temporary prescribing and dispensing authority under any one of the following conditions. The temporary certificate holder:
1. Does not meet requirements for RN licensure in this state or the RN license is suspended or revoked,
2. Fails to renew the RN license upon expiration,
3. Loses the multistate compact privilege,
4. Fails the national certifying examination, or
5. Violates a statute or rule of the Board.

F. An applicant who is denied a temporary certificate or temporary prescribing and dispensing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the temporary certification or authority. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-508. Standards Related to Registered Nurse Practitioner Scope of Practice

A. An RNP shall refer a patient to a physician or another health care provider if the referral will protect the health and welfare of the patient and consult with a physician and other health care providers if a situation or condition occurs in a patient that is beyond the RNP's knowledge and experience.

B. In addition to the scope of practice permitted a registered nurse, a registered nurse practitioner, under A.R.S. §§ 32-1601 (20) and 32-1606(B)(12), may perform the following acts within the limits of the population focus of certification:
1. Examine a patient and establish a medical diagnosis by client history, physical examination, and other criteria.
2. For a patient who requires the services of a health care facility:
   a. Admit the patient to the facility,
   b. Manage the care the patient receives in the facility, and
   c. Discharge the patient from the facility.
3. Order and interpret laboratory, radiographic, and other diagnostic tests, and perform those tests that the RNP is qualified to perform.
4. Prescribe, order, administer and dispense therapeutic measures including pharmacologic agents and devices if authorized under R4-19-511, and non-pharmacological interventions including, but not limited to, durable medical equipment, nutrition, home health care, hospice, physical therapy and occupational therapy.
5. Identify, develop, implement, and evaluate a plan of care for a patient to promote, maintain, and restore health.
6. Perform therapeutic procedures that the RNP is qualified to perform.
7. Delegate therapeutic measures to qualified assistive personnel including medical assistants under R4-19-509.
8. Perform additional acts that the RNP is qualified to perform and that are generally recognized as being within the role and population focus of certification.

C. An RNP shall only provide health care services including prescribing and dispensing within the RNP's population focus and role and for which the RNP is educationally prepared and for which competency has been established and maintained. Educational preparation means academic coursework or continuing education activities that include both theory and supervised clinical practice.

Historical Note

Adopted effective February 25, 1987 (Supp. 87-1). Former Section R4-19-505 renumbered to R4-19-506, new Section R4-19-505 renumbered from R4-19-504 effective November 18, 1994 (Supp. 94-4). Former Section R4-19-505 repealed, new Section R4-19-505 renumbered from R4-19-504 and amended effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-508 renumbered to R4-19-513; new R4-19-508 renumbered from R4-19-505 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1483, effective June 2, 2007 (Supp. 07-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (B) was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under subsection (B), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-509. Delegation to Medical Assistants

A. Under A.R.S. §§ 32-1456 and 32-1601(20), an RNP may delegate patient care to a medical assistant in an office or outpatient setting. The RNP shall verify that a medical assistant to whom the RNP delegates meets at least one of the following qualifications:
1. Completed an approved medical assistant training program as defined in A.A.C. R4-16-101(3);
2. If a graduate of an unapproved medical assistant training program, passed the medical assistant examination administered by either the American Association of Medical Assistants or the American Medical Technologists;
3. Completed an unapproved medical assistant training program and was employed as a medical assistant on a continuous basis since completion of the program before February 2, 2000;
4. Was directly supervised by the same registered nurse practitioner for at least 2000 hours before February 2, 2000; or
5. Completed a medical services training program of the Armed Forces of the United States.

B. An RNP may delegate the following acts to a medical assistant who is under the direct supervision of the RNP and demonstrates competency in the performance of the act:
1. Obtain vital signs;
2. Perform venipuncture and draw blood;
3. Perform capillary puncture;
4. Perform pulmonary function testing;
5. Perform electrocardiography;
6. Perform patient screening using established protocols;
7. Perform dosage calculations as applicable to written orders;
8. Apply pharmacology principles to prepare and administer oral, inhalant, topical, otic, optic, rectal, vaginal and parenteral medications (excluding intravenous medications);
9. Maintain medication and immunization records;
10. Assist provider with patient care;
11. Perform Clinical Laboratory Improvement Amendments (CLIA) waived hematology, chemistry, urinalysis, microbiological and immunology testing;
12. Screen test results;
13. Obtain specimens for microbiological testing;
14. Obtain patient history;
15. Instruct patients according to their needs to promote health maintenance and disease prevention;
16. Prepare a patient for procedures or treatments;
17. Document patient care and education;
18. Perform first aid procedures;
19. Perform whirlpool treatments;
20. Perform diathermy treatments;
21. Perform electronic galvation stimulation treatments;
22. Perform ultrasound therapy;
23. Perform massage therapy (subject to regulation by massage therapy board);
24. Apply traction treatments;
25. Apply Transcutaneous Nerve Stimulation unit treatments;
26. Apply hot and cold pack treatments; and
27. Administer small volume nebulizer treatments.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore one of the A.R.S. citations in subsection (A) was updated. Agency request filed July 12,

2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under subsection (A), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-510. Expired

Historical Note

Section renumbered from R4-19-506 and amended effective November 25, 1996 (Supp. 96-4). Section repealed made by final rulemaking at 10 A.A.R. 792, effective April 3, 2004 (Supp. 04-1). Section R4-19-510 renumbered from R4-19-506 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 1093, effective March 24, 2011 (Supp. 11-2).

R4-19-511. Prescribing and Dispensing Authority; Prohibited Acts

A. The Board shall authorize an RNP to prescribe and dispense (P&D) drugs and devices within the RNP's population focus only if the RNP does all of the following:
1. Obtains authorization by the Board to practice as a registered nurse practitioner;
2. Applies for prescribing and dispensing privileges on the application for registered nurse practitioner certification;
3. Submits a completed verified application on a form provided by the Board that contains all of the following information:
   a. Name, address, e-mail address and home telephone number;
   b. Arizona registered nurse license number, or copy of compact license;
   c. Nurse practitioner population focus;
   d. Nurse practitioner certification number issued by the Board; and
   e. Business address and telephone number;
4. Submits evidence of a minimum of 45 contact hours of education within the three years immediately preceding the application, covering one or both of the following topics consistent with the population focus of education and certification:
   a. Pharmacology, or
   b. Clinical management of drug therapy, and
5. Submits the required fee.

B. An applicant who is denied P & D authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the P & D authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.

C. An RNP shall not prescribe or dispense drugs or devices without Board authority or in a manner inconsistent with law. The Board may impose an administrative or civil penalty for each violation, suspend the RNP's P & D authority, or impose other sanctions under A.R.S. § 32-1606(C). In determining the appropriate sanction, the Board shall consider factors such as the number of violations, the severity of each violation, and the potential for or existence of patient harm.

D. In addition to acts listed under R4-19-403, for a nurse who prescribes or dispenses a drug or device, a practice that is or might be harmful to the health of a patient or the public, includes one or more of the following:
1. Prescribing a controlled substance to oneself or a member of the nurse's family;
2. Providing any controlled substance or prescription-only drug or device for other than accepted therapeutic purposes;
3. Delegating the prescribing and dispensing of drugs or devices to any other person;
4. Prescribing for a patient that is not in the registered nurse practitioner's population focus of education and certification except as authorized in subsection (D)(5)(d); and
5. Prescribing, dispensing, or furnishing a prescription drug or a prescription-only device to a person unless the nurse has examined the person and established a professional relationship, except when the nurse is engaging in one or more of the following:
   a. Providing temporary patient care on behalf of the patient's regular treating and licensed health care professional;
   b. Providing care in an emergency medical situation where immediate medical care or hospitalization is required by a person for the preservation or health, life, or limb;
   c. Furnishing a prescription drug to prepare a patient for a medical examination; or
   d. Prescribing antimicrobials to a person who is believed to be at substantial risk as a contact of a patient who has been examined and diagnosed with a communicable disease by the prescribing RNP even if the contact is not in the population focus of the registered nurse practitioner's certification.

Historical Note

Adopted effective November 25, 1996 (Supp. 96-4). Section repealed; new Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-512. Prescribing Drugs and Devices

A. An RNP granted P & D authority by the Board may:
1. Prescribe drugs and devices;
2. Provide for refill of prescription-only drugs and devices for one year from the date of the prescription.

B. An RNP with P & D authority who wishes to prescribe a controlled substance shall obtain a DEA registration number before prescribing a controlled substance. The RNP shall file the DEA registration number with the Board.

C. An RNP with a DEA registration number may prescribe:
1. A Schedule II controlled substance as defined in the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or Arizona's Uniform Controlled Substances Act, A.R.S. Title 36, Chapter 27, but shall not prescribe refills of the prescription;
2. A Schedule III or IV controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe a maximum of five refills in six months; and
3. A Schedule V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, and may prescribe refills for a maximum of one year.

D. An RNP whose DEA registration is revoked or expires shall not prescribe controlled substances. An RNP whose DEA registration is revoked or limited shall report the action to the Board.

E. In all outpatient settings or at the time of hospital discharge, an RNP with P & D authority shall personally provide a patient or the patient's representative with the name of the drug, directions for use, and any special instructions, precautions, or stor-

age requirements necessary for safe and effective use of the drug if any of the following occurs:
1. A new drug is prescribed or there is a change in the dose, form, or direction for use in a previously prescribed drug;
2. In the RNP's professional judgment, these instructions are warranted; or
3. The patient or patient's representative requests instruction.

F. An RNP with P & D authority shall ensure that all prescription orders contain the following:
1. The RNP's name, address, telephone number, and population focus;
2. The prescription date;
3. The name of the patient and either the address of the patient or a blank for the address if the prescription is not being dispensed by the RNP;
4. The full name of the drug, strength, dosage form, and directions for use;
5. The letters “DAW”, “dispense as written”, “do not substitute”, “medically necessary” or any similar statement on the face of the prescription form if intending to prevent substitution of the drug;
6. The RNP's DEA registration number, if applicable; and
7. The RNP's signature.

Historical Note

Former R4-19-512 renumbered to R4-19-514; new R4-19-512 made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-513. Dispensing Drugs and Devices

A. A registered nurse practitioner (RNP) granted prescribing and dispensing authority by the Board may:
1. Dispense drugs and devices to patients;
2. Dispense samples of drugs packaged for individual use without a prescription order or additional labeling;
3. Only dispense drugs and devices obtained directly from a pharmacy, manufacturer, wholesaler, or distributor; and
4. Allow other personnel to assist in the delivery of medications provided that the RNP retains responsibility and accountability for the dispensing process.

B. If dispensing a drug or device, an RNP with dispensing authority shall:
1. Ensure that the patient has a written prescription that complies with R4-19-512(F) and contains the address of the patient and inform the patient that the prescription may be filled by the prescribing RNP or by a pharmacy of the patient's choice;
2. Affix a prescription number to each prescription that is dispensed;
3. Ensure that all original prescriptions are preserved for a minimum of seven years and make the original prescriptions available at all times for inspection by the Board of Nursing, Board of Pharmacy, and law enforcement officers in performance of their duties; and
4. Report the dispensing of controlled substances to the Board of Pharmacy’s Controlled Substance Prescription Monitoring Program as required in A.R.S. § 36-2608.

C. An RNP practicing in a public health facility operated by this state or a county or in a qualifying community health center under A.R.S. § 32-1921(D) and (F) may dispense drugs or devices to patients without a written prescription if the public health facility or the qualifying community health center adheres to all storage, labeling, safety, and recordkeeping rules of the Board of Pharmacy.

D. An RNP who dispenses a drug shall ensure that a label is affixed that contains all of the following information:
1. Dispensing RNP's name and population focus;
2. Address and telephone number of the location from which the drug is dispensed;
3. Date dispensed;
4. Patient's name and address;
5. Name and strength of the drug, quantity in the container, directions for use, and any cautionary statements necessary for the safe and effective use of the drug;
6. Manufacturer and lot number; and
7. Prescription order number.

E. An RNP who dispenses a drug or device shall ensure that the following information about the drug or device is entered into the patient's medical record:
1. Name of the drug, strength, quantity, directions for use, and number of refills;
2. Date dispensed;
3. Therapeutic reason;
4. Manufacturer and lot number; and
5. Prescription order number.

F. An RNP with dispensing authority shall:
1. Keep all drugs in a locked cabinet or room in an area that is not accessible to patients;
2. If dispensing a controlled substance:
   a. Control access by a written policy that specifies:
      i. Those persons allowed access, and
      ii. Procedures to report immediately the discovery of a shortage or illegal removal of drugs to a local law enforcement agency and provide that agency and the DEA with a written report within seven days of the discovery.
   b. Maintain and make available to the Board upon request an ongoing inventory and record of:
      i. A Schedule II controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, separately from all other records, and a prescription for a Schedule II controlled substance in a separate prescription file; and
      ii. A Schedule III, IV, or V controlled substance, as defined in the federal Controlled Substances Act or Arizona's Uniform Controlled Substances Act, in a form that is readily retrievable from other records.

G. If a prescription order is refilled, an RNP with P & D authority shall record the following information on the back of the prescription order or in the patient's medical record:
1. Date refilled,
2. Quantity dispensed if different from the full amount of the original prescription,
3. RNP's name or identifiable initials, and
4. Manufacturer and lot number.

H. Under the supervision of an RNP with P & D authority, other personnel may:
1. Receive and record a prescription refill request from a patient or a patient's representative;
2. Receive and record a verbal refill authorization from the RNP including:
   a. The RNP's name;
   b. Date of refill;
   c. Name, directions for use, and quantity of drug; and
   d. Manufacturer and lot number;
3. Prepare and affix a prescription label; and
4. Prepare a drug or device for delivery, provided that the dispensing RNP:

a. Inspects the drug or device and initials the label before issuing to the patient to ensure compliance with the prescription; and
b. Ensures that the patient is informed of the name of the drug or device, directions for use, precautions, and storage requirements.

Historical Note
Adopted effective November 25, 1996 (Supp. 96-4). Amended by final rulemaking at 5 A.A.R. 4300, effective October 18, 1999 (Supp. 99-4). Former R4-19-513 renumbered to R4-19-515; new R4-19-513 renumbered from R4-19-508 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2).

R4-19-514. Standards Related to Clinical Nurse Specialist Scope of Practice
In addition to the functions of a registered nurse, a CNS, under A.R.S. § 32-1601(7), may perform one or more of the following for an individual, family, or group within the population focus of certification and for which competency has been maintained:
1. Conduct an advanced assessment, analysis, and evaluation of a patient's complex health needs;
2. Establish primary and differential health status diagnoses;
3. Direct health care as an advanced clinician;
4. Develop, implement, and evaluate a treatment plan according to a patient's need for specialized nursing care;
5. Establish nursing standing orders, algorithms, and practice guidelines related to interventions and specific plans of care;
6. Manage health care according to written protocols;
7. Facilitate system changes on a multidisciplinary level to assist a health care facility and improve patient outcomes cost-effectively;
8. Consult with the public and professionals in health care, business, and industry in the areas of research, case management, education, and administration;
9. Perform psychotherapy if certified as a clinical nurse specialist in psychiatric and mental health nursing;
10. Prescribe and dispense durable medical equipment; or
11. Perform additional acts that the clinical nurse specialist is qualified to perform.

Historical Note
Adopted effective November 25, 1996 (Supp. 96-4). Section R4-19-514 renumbered from R4-19-512 and amended by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1438, effective July 6, 2013 (Supp. 13-2). A.R.S. Section reference updated under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-515. Repealed

Historical Note
Section adopted by final rulemaking at 6 A.A.R. 335, effective December 20, 1999 (Supp. 99-4). Section R4-19-515 renumbered from R4-19-513 by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

R4-19-516. Repealed

Historical Note
New Section made by final rulemaking at 11 A.A.R. 3804, effective November 12, 2005 (Supp. 05-3). Repealed by final rulemaking at 18 A.A.R. 2140, effective August 8, 2012 (Supp. 12-3).

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

R4-19-601. Expired

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 618, effective December 31, 2001 (Supp. 02-1). Section R4-19-601 renumbered from R4-19-602 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

R4-19-602. Letter of Concern
A letter of concern issued by the Board is not an appealable agency action as defined in A.R.S. § 41-1092.

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-602 renumbered to R4-19-601; new Section R4-19-602 made by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-603. Representation
Any person subject to a hearing may participate in the hearing and may be represented by legal counsel. The Board shall not pay for the person's legal counsel.

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-603 repealed; new Section R4-19-603 renumbered from R4-19-604 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-604. Notice of Hearing; Response
A. The Board, in consultation with the Office of Administrative Hearings, as necessary shall prepare and serve a written notice of hearing on all parties under A.R.S. § 41-1092.05.
B. In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:
1. The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;
2. The name, mailing address, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;
3. A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;
4. The names and mailing addresses of persons to whom notice is being given, including the Attorney General representing the state at the hearing; and
5. Any other matters relevant to the proceedings.

C. The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:
1. The party's name, address, and telephone number;
2. Whether the party has legal representation and, if so, the name and address of the attorney;

3. A response to the allegations contained in the notice of hearing; and
4. Any other matters relevant to the proceedings.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-604 renumbered to R4-19-603; new Section R4-19-604 renumbered from R4-19-605 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-605. Expired

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-605 renumbered to R4-19-604; new Section R4-19-605 renumbered from R4-19-606 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

R4-19-606. Expired

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-606 renumbered to R4-19-605; new Section R4-19-606 renumbered from R4-19-607 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

R4-19-607. Recommended Decision

The Administrative Law Judge who conducts the hearing shall make a recommended decision under A.R.S. § 41-1092.08. The Board shall immediately transmit a copy of the recommended decision to each party. Each party may file a memorandum of objections for consideration at the next Board meeting that contains the reasons why the recommended decision is in error or requires correction, and includes appropriate citations to the record, statutes, or rules in support of each objection.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-607 renumbered to R4-19-606; new Section R4-19-607 renumbered from R4-19-612 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-608. Rehearing or Review of Decision

A. A party may file a motion for rehearing or review of a decision under A.R.S. §§ 41-1092.09 and 32-1665.

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

C. Upon the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the 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 (B). An order granting a rehearing shall specify with particularity the grounds for the order. Any rehearing shall cover only those specified matters.

D. Within the time limits of A.R.S. § 41-1092.09, the Board may order a rehearing or review on its own initiative for any of the reasons in subsection (B). The Board shall specify the grounds for the rehearing or review in the order.

E. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days of such service, serve opposing affidavits.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1). Section R4-19-608 renumbered from R4-19-614 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-609. Effectiveness of Orders

A. Except as provided in subsection (B), a decision is final upon expiration of the time for filing a request for rehearing or review or upon denial of such a request, whichever is later. If the Board grants a rehearing or review, the decision is stayed until another order is issued.

B. If it finds that the public health, safety, or welfare imperatively requires emergency action, the Board may proceed under A.R.S. § 41-1092.11(B), ordering summary suspension of a license while other proceedings are pending. If the Board orders a summary suspension, a party shall exhaust the party's administrative remedies by filing a motion for rehearing or review under A.R.S. § 41-1092.09(B) before seeking judicial review of the decision.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1). Section R4-19-609 renumbered from R4-19-615 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-610. Expired

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

R4-19-611. Expired

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

R4-19-612. Renumbered

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-607 by final rulemaking at 9

A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-613. Expired

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 491, effective December 31, 2001 (Supp. 02-1).

R4-19-614. Renumbered

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-608 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-615. Renumbered

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Section renumbered to R4-19-609 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

R4-19-701. Expired

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Section expired under A.R.S. § 41-1056(E) at 17 A.A.R. 2692, effective August 31, 2011 (Supp. 11-4).

R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact

A person may petition the Board, requesting the making of a final rule, or a review of an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033, or objecting to a rule under A.R.S. § 41-1056.01, by filing a petition which contains the following:

1. The name, current address, and telephone number of the person submitting the petition.
2. For the making of a new rule, the specific language of the proposed rule.
3. For amendment of a current rule, the *Arizona Administrative Code* (A.A.C.) Section number, the Section heading, and the specific language of the current rule, with any language to be deleted stricken through but legible, and any new language underlined.
4. For repeal of a current rule, the A.A.C. Section number and Section heading proposed for repeal.
5. The reasons the rule should be made, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information including:
   a. Any statistical data or other justification, with clear references to attached exhibits;
   b. An identification of any person or segment of the public that would be affected and how they would be affected; and
   c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or written comments offered by the public.
6. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the Board.
7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence of any of the following grounds:
   a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule.
   b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
   c. The Board did not select the alternative that imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.
8. The signature of the person submitting the petition.

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 19 A.A.R. 1419, effective July 6, 2013 (Supp. 13-2).

R4-19-703. Oral Proceedings

A. The Board shall schedule an oral proceeding on all rulemakings and publish the notice as prescribed in A.R.S. § 41-1023. A Board member, the executive director, or a Board staff member shall serve as presiding officer at an oral proceeding.

B. The Board shall record all oral proceedings either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.

C. The presiding officer shall conduct an oral proceeding according to A.R.S. § 41-1023; and
1. Request each person in attendance register;
2. Obtain the following information from any person who intends to speak:
   a. Name and whether the person represents another;
   b. Position with regard to the proposed rule; and
   c. Approximate length of time needed to speak;
3. Open the proceeding by identifying the subject matter of the rules under consideration and the purpose of the proceeding;
4. Present the agenda;
5. Ensure that a Board representative explains the background and general content of the proposed rules;
6. Limit comments to a reasonable period, and prevent undue repetition of comments;
7. Announce the address for written public comments and the date and time for the close of record; and
8. Close the proceeding if there are no persons in attendance within 15 minutes after the posted meeting time.

Historical Note
Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-703 repealed; new Section R4-19-703 renumbered from R4-19-704 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-704. Petition for Altered Effective Date

A. A person wishing to alter the effective date of a rule shall file a written petition that contains:

1. The name, current address, and telephone number of the person submitting the petition;
2. Identification of the proposed rule;
3. If the person is petitioning for an immediate effective date, a demonstration that the immediate date is necessary for one or more of the reasons in A.R.S. § 41-1032(A);
4. If the person is petitioning for a later effective date, more than 60 days after filing of the rule, a demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
5. The signature of the person submitting the petition.

B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-704 renumbered to R4-19-703; new Section R4-19-704 renumbered from R4-19-705 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-705. Written Criticism of an Existing Rule

A. Any person may file with the Board a written criticism of an existing rule that contains:
1. The rule addressed, and
2. The reason the existing rule is inadequate, unduly burdensome, unreasonable, or improper.

B. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Former Section R4-19-705 renumbered to R4-19-704; new Section R4-19-705 renumbered from R4-19-706 and amended by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

R4-19-706. Renumbered

Historical Note

Adopted effective October 10, 1996 (Supp. 96-4). Renumbered to R4-19-705 by final rulemaking at 9 A.A.R. 1288, effective June 3, 2003 (Supp. 03-2).

ARTICLE 8. NURSING ASSISTANTS AND CERTIFIED MEDICATION ASSISTANTS

R4-19-801. Common Standards for Nursing Assistant (NA) and Certified Medication Assistant (CMA) Training Programs

A. Program Administrative Responsibilities
1. Any person or entity offering a training program under this Article shall, before accepting tuition from prospective students, and at all times thereafter, provide program personnel including a coordinator and instructors, as applicable, who meet the requirements of this Article.
2. If at any time, a person or entity offering a training program cannot provide a qualified instructor for its students, it shall immediately cease instruction and, if the training program cannot provide a qualified instructor within 5 business days, the training program shall offer all enrolled students a refund of all tuition and fees the students have paid to the program.
3. A training program shall obtain and maintain Board approval or re-approval as specified in this Article and A.R.S § 32-1650.01(B) before advertising the program, accepting any tuition, fees, or other funds from prospective students, or enrolling students.
4. A training program that uses external clinical facilities shall execute a written agreement with each external clinical facility that:
   a. Provides the program instructor the ability to assign patient care experiences to students after consultation with facility staff, and
   b. Contains a termination clause that provides sufficient time for enrolled students to complete their clinical training upon termination of the agreement.
5. A training program that requires students to pay tuition for the program shall:
   a. Make all program costs readily accessible on the school's website with effective dates,
   b. Publicly post any increases in costs on the school's website 30 days in advance of the increase;
   c. Include in the cost calculation and public posting, all fees directly paid to the program including but not limited to tuition, lab fee, clinical fee, enrollment fee, insurance, books, uniform, health screening, credit card fee and state competency exam fee; and
   d. Provide a description of all program costs to the student that are not directly paid to the program.
6. Before collecting any tuition or fees from a student, a training program shall notify each prospective student of Board requirements for certification including legal presence in the United States, criminal background check requirements, and ineligibility for certification under A.R.S. § 32-1646(B).
7. Within the first 14 days of the program and before 50% of program instruction occurs, a training program shall transmit to the Board-approved test vendor, accurate and complete information regarding each enrolled student for the purposes of tracking program enrollment, attrition and completion. Upon receipt of accurate completion information, the vendor shall issue a certificate of completion to the program for each successful graduate.
8. A training program shall provide the Board, or its designee, access to all training program records, students and staff at any time, including during an announced or unannounced visit. A program's refusal to provide such access is grounds for withdrawal of Board approval.
9. A training program shall provide each student with an opportunity to anonymously and confidentially evaluate the course instructor, curriculum, classroom environment, clinical instructor, clinical setting, textbook and resources of the program.
10. A training program shall provide and implement a plan to evaluate the program that includes the frequency of evaluation, the person responsible, the evaluative criteria, the results of the evaluation and actions taken to improve the program. The program shall evaluate the following elements at a minimum every two years:
    a. Student evaluations consistent with subsection (A)(9);
    b. First-time pass rates on the written and manual skills certification exams for each admission cohort;
    c. Student attrition rates for each admission cohort;
    d. Resolution of student complaints and grievances in the past two years; and
    e. Review and revision of program policies.
11. A training program shall submit written documentation and information to the Board regarding the following program changes within 30 days of instituting the change:
    a. For a change or addition of an instructor or coordinator, the name, RN license number, and documentation that the coordinator or instructor meets the

applicable requirements of R4-19-802(B) and (C) for NA programs and R4-19-803(B) for CMA programs;

b. For a change in classroom location, the previous and new location, and a description of the new classroom;

c. For a change in a clinical facility, the name and address of the new facility and a copy of the signed clinical contract;

d. For a change in the name or ownership of the training program, the former name or owners and the new name or owners; and

e. For a decrease in hours of the program, a written revised curriculum document that clearly highlights new content, strikes out deleted content and includes revised hours of instruction, as applicable.

B. Policies and Procedures

1. A training program shall promulgate and enforce written policies and procedures that comply with state and federal requirements, and are consistent with the policies and procedures of the parent institution, if any. The program shall provide effective and review dates for each policy or procedure.
2. A training program shall provide a copy of its policies and procedures to each student on or before the first day the student begins the program.
3. The program shall promulgate and enforce the following policies with accompanying procedures:
   a. Admission requirements including:
      i. Criminal background, health and drug screening either required by the program or necessary to place a student in a clinical agency; and
      ii. English language, reading and math skills necessary to comprehend course materials and perform duties safely.
   b. Student attendance policy, ensuring that a student receives the hours and types of instruction as reported to the Board in the program's most recent application to the Board and as required in this Article. If absences are permitted, the program shall ensure that each absence is remediated by providing and requiring the student to complete learning activities that are equivalent to the missed curriculum topics, clinical experience or skill both in substance and in classroom or clinical time.
   c. A final examination policy that includes the following provisions;
      i. Require that its students score a minimum 75% correct answers on a comprehensive secure final examination with no more than one retake. The program may allow an additional retake following documented, focused remediation based on past test performance. Any retake examination must contain different items than the failed exam, address all course competencies, and be documented with score, date administered and proctor in the student record; and
      ii. Require that each student demonstrate, to program faculty, satisfactory performance of each practical skill as prescribed in the curriculum before performance of that skill on patients or residents without the instructor's presence, direct observation, and supervision;
   d. Student record maintenance policies consistent with subsection (D) including the retention period, the location of records and the procedure for students to access to their records.
   e. Clinical supervision policies consistent with clinical supervision provisions of this Section, and:
      i. R4-19-802(C) and (D) for NA programs, or
      ii. R4-19-803(B) and (C) for CMA programs;
   f. Student conduct policies for expected and unacceptable conduct in both classroom and clinical settings;
   g. Dismissal and withdrawal policies;
   h. Student grievance policy that includes a chain of command for grade disputes and ensures that students have the right to contest program actions and provide evidence in support of their best interests including the right to a third party review by a person or committee that has no stake in the outcome of the grievance;
   i. Program progression and completion criteria.

C. Classroom and clinical instruction

1. During clinical training sessions, a training program shall ensure that each student is identified as a student by a name badge or another means readily observable to staff, patients, and residents.
2. A training program shall not utilize, or allow the clinical facility to utilize, students as staff during clinical training sessions.
3. A training program shall provide a clean, comfortable, distraction-free learning environment for didactic teaching and skill practice.
4. A training program shall provide, in either electronic or paper format, a written curriculum to each student on or before the first day of class that includes a course description, course hours including times of instruction and total course hours, instructor information, passing requirements, course goals, and a topical schedule containing date, time and topic for each class session.
5. For each unit or class session the program shall provide, to its students, written:
   a. Measurable learner-centered objectives,
   b. An outline of the material to be taught, and
   c. The learning activities or reading assignment.
6. A training program shall utilize an electronic or paper textbook corresponding to the course curriculum that has been published within the previous five years. Unless granted specific permission by the publisher, a training program shall not utilize copies of published materials in lieu of an actual textbook.
7. A training program shall provide, to all program instructors and enrolled students, access to the following instructional and educational resources:
   a. Reference materials, corresponding to the level of the curriculum; and
   b. Equipment and supplies necessary to practice skills.
8. A training program instructor shall:
   a. Plan each learning experience;
   b. Ensure that the curriculum meets the requirements of this Section;
   c. Prepare written course goals, lesson objectives, class content and learning activities;
   d. Schedule and achieve course goals and objectives by the end of the course; and
   e. Require satisfactory performance of all critical elements of each skill under R4-19-802(H) for nursing assistant and R4-19-803(D)(4) for medication assistant before allowing a student to perform the skill on a patient or resident without the instructor's presence at the bedside.

9. A qualified RN instructor shall be present at all times and during all scheduled classroom, skills laboratory and clinical sessions. In no instance shall a nursing assistant or other unqualified person provide any instruction, reinforcement, evaluation or independent activities in the classroom or skills laboratory.
10. A qualified RN instructor shall supervise any student who provides care to patients or residents by:
    a. Remaining in the clinical facility and focusing attention on student learning needs during all student clinical experiences;
    b. Providing the instructor's current and valid contact information to students and facility staff during the instructor's scheduled teaching periods;
    c. Observing each student performing tasks taught in the training program;
    d. Documenting each student's performance each day, consistent with course skills and clinical objectives;
    e. During the clinical session, engaging exclusively in activities related to the supervision of students; and
    f. Reviewing all student documentation.

D. Records
1. A training program shall maintain the following program records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
    a. Curriculum and course schedule for each admission cohort;
    b. Results of state-approved written and manual skills testing;
    c. Documentation of program evaluation under subsection (A)(10);
    d. A copy of any Board reports, applications, or correspondence, related to the program; and
    e. A copy of all clinical contracts, if using outside clinical agencies.
2. A training program shall maintain the following student records either electronically or in paper form for a minimum of three years for NA programs and five years for CMA programs:
    a. A record of each student's legal name, date of birth, address, telephone number, e-mail address and Social Security number, if available;
    b. A completed skill checklist containing documentation of student level of competency performing the skills in R4-19-802(F) for nursing assistant, and in R4-19-803(D)(4) for medication assistants;
    c. An accurate attendance record, which describes any make-up class sessions and reflects whether the student completed the required number of hours in the course; and
    d. Scores for each test, quiz, or exam and whether such test, quiz, or exam was retaken.
    e. For NA programs only, a copy of a document providing proof of legal presence in the United States as specified in A.R.S. § 41-1080 to be remitted to the Board's designated testing vendor in order to facilitate timely placement of program graduates on a nursing assistant registry.

E. Certifying Exam Passing Standard: A training program and each site of a consolidated program under R4-19-802(E) shall attain, at a minimum, an annual first-time passing rate on the manual skill and written certifying examinations that is equal to the Arizona average pass rate for all candidates on each examination minus 20 percentage points. The Board may waive this requirement for programs with less than five students taking the exam during the year. The Board shall issue a notice of deficiency under A.A.C. R4-19-805 to any program with five or more students taking the exam that fails to achieve the minimum passing standard in any calendar year.

F. Distance Learning; Innovative Programs
1. A training program may be offered using real-time interactive distance technologies such as interactive television and web based conferencing if the program meets the requirements of this Article.
2. Before a training program may offer, advertise, or recruit students for an on-line, innovative or other non-traditional program, the program shall submit an application for innovative applications in education under R4-19-214 and receive Board approval.

G. Site visits: A training program shall permit the Board, and its designee, including another state agency, to conduct an onsite scheduled evaluation for initial Board approval and renewal of approval in accordance with R4-19-804 and announced or unannounced site visits at any other time the Board deems necessary.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). A.R.S. Section reference updated under subsection (A)(6), under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-802. NA Program Requirements

A. Organization and Administration
1. A nursing assistant program may be offered by:
    a. An educational institution licensed by the State Board for Private Postsecondary Education,
    b. A public educational institution or a program funded by a local, state or federal governmental agency,
    c. A health care institution licensed by the Arizona Department of Health Services or a federally authorized health care institution,
    d. A private business that meets the requirements of this Article and all other legal requirements to operate a business in Arizona.
2. If a nursing assistant program is offered by a private business, the program shall meet the following requirements.
    a. Hold a surety bond from a surety company with a financial strength rating of "A-" or better by Best's Credit Ratings, Moody's Investors Service, Standard and Poor's rating service or another comparable rating service as determined by the Board in the amount of a minimum of $15,000. The program shall ensure that:
        i. Bond distributions are limited to students or former students with a valid claim for instructional or program deficiencies;
        ii. The amount of the bond is sufficient to reimburse the full amount of collected tuition and fees for all students during all enrollment periods of the program; and
        iii. The bond is maintained for an additional 24 months after program closure; and
    b. Upon initial use and remodeling, provide the Board with a fire inspection report from the Office of the

State Fire Marshal or the local authority with jurisdiction, indicating that each program classroom and skill lab location is in compliance with the applicable fire code.

3. Programs approved by the Board before the effective date of this Section shall comply with subsection (A)(2) within one year of the effective date. If a program does not charge tuition or fees, the bond requirement is waived.
4. A Medicare or Medicaid certified long-term care facility-based nursing assistant program shall not require a student to pay a fee for any portion of the program including the initial attempt on the state competency exam.
5. In addition to the policies required in R4-19-801(B), the Board may approve a nursing assistant program to offer an advanced placement option to a student with a background in health care. A nursing assistant program wishing to offer an advance placement option shall submit their advanced placement policy to the Board and receive approval before implementing the policy. The program shall include, at a minimum, the following provisions in its policy:
   a. Advanced placement is limited to students with at least one year full-time employment in the direct provision of health care within the past five years or students who have successfully completed course work that included direct patient care experiences in allied health, medicine or nursing in the past five years.
   b. The program, at a minimum, shall require an advanced placement student to meet the same outcomes as regular students on all examinations and skill performance demonstrations.
   c. The program shall require an advanced placement student to successfully accomplish all clinical objectives during a minimum of 16 hours of clinical practice under the direct supervision and observation of a qualified instructor and in a long-term care facility.
   d. Upon successful completion of advanced placement and any other program requirements, the program shall credit the graduate with the same number of didactic, laboratory and clinical hours as the regular graduate.

B. Program coordinator qualifications and responsibilities
1. Program coordinator qualifications include:
   a. Holding a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15; and
   b. Possessing at least two years of nursing experience at least one year of which is in the provision of long-term care facility services.
2. A director of nursing in a health care facility may assume the role of a program coordinator for a nursing assistant training program that is housed in the facility but shall not function as a program instructor.
3. A program coordinator's responsibilities include:
   a. Supervising and evaluating the program;
   b. Ensuring that instructors meet Board qualifications and there are sufficient instructors to provide for a clinical ratio not to exceed 10 students per instructor;
   c. Ensuring that the program meets the requirements of this Article; and
   d. Ensuring that the program meets federal requirements regarding clinical facilities under 42 CFR 483.151.
4. Other than the director of nursing in a long-term care facility, a program coordinator may also serve as a program instructor.

C. Program instructor qualifications and duties
1. Program instructor qualifications include:
   a. Holding a current, registered nurse license that is active and in good standing under A.R.S. Title 32, Chapter 15 and provide documentation of a minimum of one year full time or 1500 hours employment providing direct care as a registered nurse in any setting; and
   b. At a minimum, one of the following:
      i. Successful completion of a three semester credit course on adult teaching and learning concepts offered by an accredited post-secondary educational institution,
      ii. Completion of a 40 hour continuing education program in adult teaching and learning concepts that was awarded continuing education credit by an accredited organization,
      iii. One year of full-time or 1500 hours experience teaching adults as a faculty member or clinical educator, or
      iv. One year of full time or 1500 hours experience supervising nursing assistants, either in addition to or concurrent with the one year of experience required in subsection (C)(1)(a).
2. In addition to the program instruction requirements in R4-19-801(C), a nursing assistant program instructor shall provide on-site supervision for each student placed in a health care facility not to exceed 10 students per instructor;

D. Clinical and classroom hour requirements and resources
1. A nursing assistant training program shall ensure each graduate receives a minimum of 120 hours of total instruction consisting of:
   a. Instructor-led teaching in a classroom setting for a minimum of 40 hours;
   b. Instructor-supervised skills practice and testing in a laboratory setting for a minimum of 20 hours; and
   c. Instructor-supervised clinical experiences for a minimum of 40 hours, consistent with the goals of the program. Clinical requirements include the following:
      i. The program shall provide students with clinical orientation to any clinical setting utilized.
      ii. The program shall provide a minimum of 20 hours of direct resident care in a long-term care facility licensed by the Department of Health Services, except as provided in subsection (iv). Direct resident care does not include orientation and clinical pre and post conferences.
      iii. If another health care facility is used for additional required hours, the program shall ensure that the facility provides opportunities for students to apply nursing assistant skills similar to those provided to long-term care residents.
      iv. If a long-term care facility licensed by the Department of Health Services is not available within 50 miles of the training program's classroom, the program may provide the required clinical hours in a facility or unit that cares for

residents or patients similar to those residing in a long-term care facility.

d. To meet the 120 hour minimum program hour requirement, a NA program shall designate an additional 20 hours to classroom, skill or clinical instruction based upon the educational needs of the program's students and program resources.

2. A nursing assistant training program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills. At a minimum, the program shall provide:
   a. Hospital-type bed, over-bed table, linens, linen protectors, pillows, privacy curtain, call-light and nightstand;
   b. Thermometers, stethoscopes, including a teaching stethoscope, aneroid blood pressure cuffs, and a scale;
   c. Realistic skill training equipment, such as a manikin or model, that provides opportunity for practice and demonstration of perineal care;
   d. Personal care supplies including wash basin, towels, washcloths, emesis basin, rinse-free wash, tooth brushes, disposable toothettes, dentures, razor, shaving cream, emery board, orange stick, comb, shampoo, hair brush, and lotion;
   e. Clothes for dressing residents including undergarments, socks, hospital gowns, shirts, pants and shoes or non-skid slippers;
   f. Elimination equipment including fracture bed pans, bed pans, urinals, ostomy supplies, adult briefs, specimen cups, graduate cylinder, and catheter supplies;
   g. Aseptic and protective equipment including running water, sink, soap, paper towels, clean disposable gloves, surgical masks, particulate respirator mask for demonstration purposes, gowns, hair protectors and shoe protectors;
   h. Restorative equipment including wheelchair, gait belt, walker, anti-embolic hose, adaptive equipment, and cane;
   i. Feeding supplies including cups, glasses, dishes, straws, standard utensils, adaptive utensils and clothing protectors;
   j. Clean dressings, bandages and binders; and
   k. Documentation forms.

E. Consolidated Programs

1. A nursing assistant program may request, in writing, to consolidate more than one site of a program under one program approval for convenience of administration. The site of a program is where didactic instruction occurs. The Board may approve the request for a consolidated program if all the following conditions are met:
   a. The program is not based in a long-term care facility;
   b. The program does not offer an innovative program as defined in R4-19-214 at any consolidated site;
   c. A single RN administrator has authority and responsibility for all sites including hiring, retention and evaluation of all program personnel;
   d. Curriculum and policies are identical for all sites;
   e. Instructional delivery methods are substantially similar at all sites;
   f. Didactic, lab practice and clinical hours are identical for all sites;
   g. The program presents sufficient evidence that all sites have comparable resources, including classroom, skill lab, clinical facilities and staff. Evidence may include pictures, videos, documentation of equipment purchase and instructor resumes;
   h. The program provides an application to the Board a minimum of 30 days before consolidation of the program or use of the new site;
   i. The site is fully staffed before accepting students;
   j. The program evaluates each site separately under R4-19-801(A)(9);
   k. The program arranges for the test vendor to provide a separate program number for each site;
2. There have been no substantiated complaints against the program or failure to follow the provisions of this Article in the past two years.
3. The program shall notify the Board if a site is closed or has not been used in two years.
4. A program that has been Board-approved as a consolidated program may request to add additional sites 30 days in advance of site utilization. The Board may approve the new site if the site meets the criteria in subsection (E)(1).
5. The Board may deny a request to consolidate programs or add a site if the requirements of this section are not met. Denial of such a request is not a disciplinary action and does not affect the program's approval status.
6. The Board shall not renew or visit any site that was not used in the previous approval period.

F. Curriculum: a nursing assistant training program shall provide classroom and clinical instruction regarding each of the following subjects:

1. Communication, interpersonal skills, and documentation;
2. Infection control;
3. Safety and emergency procedures, including abdominal thrusts for foreign body airway obstruction and cardiopulmonary resuscitation;
4. Patient or resident independence;
5. Patient or resident rights, including the right to:
   a. Confidentiality;
   b. Privacy;
   c. Be free from abuse, mistreatment, and neglect;
   d. Make personal choices;
   e. Obtain assistance in resolving grievances and disputes;
   f. Security of a patient's or resident's personal property; and
   g. Be free from restraints;
6. Recognizing and reporting abuse, mistreatment or neglect to a supervisor;
7. Basic nursing assistant skills, including:
   a. Taking vital signs, height, and weight using standing, wheelchair and bed scales;
   b. Maintaining a patient's or resident's environment;
   c. Observing and reporting pain;
   d. Assisting with diagnostic tests including obtaining specimens;
   e. Providing care for patients or residents with drains and tubes including catheters and feeding tubes;
   f. Recognizing and reporting abnormal patient or resident physical, psychological, or mental changes to a supervisor;
   g. Applying clean bandages;
   h. Providing peri-operative care; and
   i. Assisting in admitting, transferring, or discharging patients or residents.
8. Personal care skills, including:
   a. Bathing, skin care, and dressing;
   b. Oral and denture care;

c. Shampoo and hair care;
d. Fingernail care;
e. Toileting, perineal, and ostomy care;
f. Feeding and hydration, including proper feeding techniques and use of assistive devices in feeding; and

9. Age specific, mental health, and social service needs, including:
   a. Modifying the nursing assistant's behavior in response to patient or resident behavior,
   b. Demonstrating an awareness of the developmental tasks and physiologic changes associated with the aging process,
   c. Responding to patient or resident behavior,
   d. Allowing the resident or patient to make personal choices and providing and reinforcing other behavior consistent with the individual's dignity,
   e. Providing culturally sensitive care,
   f. Caring for the dying patient or resident, and
   g. Using the patient's or resident's family as a source of emotional support for the resident or patient;
10. Care of the cognitively impaired patient or resident including;
   a. Understanding and addressing the unique needs and behaviors of patients or residents with dementia or other cognitive impairment,
   b. Communicating with cognitively impaired patients or residents,
   c. Reducing the effects of cognitive impairment, and
   d. Appropriate responses to the behavior of cognitively impaired individuals.
11. Skills for basic restorative services, including:
   a. Body mechanics;
   b. Resident self-care;
   c. Assistive devices used in transferring, ambulating and dressing;
   d. Range of motion exercises;
   e. Bowel and bladder training;
   f. Care and use of prosthetic and orthotic devices; and
   g. Turning and positioning a resident in bed, transferring a resident between bed and chair and positioning a resident in a chair.
12. Health care team member skills including the role of the nursing assistant and others on the health care team, time management and prioritizing work; and
13. Legal aspects of nursing assistant practice, including:
   a. Requirements for licensure and registry placement and renewal,
   b. Delegation of nursing tasks,
   c. Ethics,
   d. Advance directives and do-not-resuscitate orders, and
   e. Standards of conduct under R4-19-814.
14. Body structure and function, together with common diseases and conditions.

G. Curriculum sequence: A nursing assistant training program shall provide a student with a minimum of 16 hours instruction in the subjects identified in subsections (F)(1) through (F)(6) before allowing a student to care for patients or residents.

H. Skills: A nursing assistant instructor shall verify and document that the following skills are satisfactorily performed by each student before allowing the student to perform the skill on a patient or resident without the instructor present:
1. Hand hygiene, gloving and gowning; and
2. Skills in subsection (F)(7), (8) and (11)(a), (c), (d), (f), and (g).

I. One-year approval: following receipt and review of a complete initial application as specified in R4-19-804 the Board may approve the program for a period that does not exceed one year, if requirements are met, without a site visit.

J. A Medicare or Medicaid certified long-term care facility-based program shall provide in its initial and each renewal application, a signed, sworn, and notarized document, executed by the program coordinator, affirming that the program does not require a nursing assistant student to pay a fee for any portion of the program including the initial attempt on the state competency exam.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-803. Certified Medication Assistant Program Requirements

A. Organization and Administration: A certified medication assistant (CMA) program may only be offered by those entities identified in A.R.S § 32-1650.01(A).

B. Instructor qualifications and duties
1. A medication assistant program instructor shall:
   a. Hold a current, registered nurse license that is active and in good standing or multistate privilege to practice as an RN under A.R.S. Title 32, Chapter 15;
   b. Possess at least two years or 3,000 hours of direct care nursing experience; and
   c. Have administered medications to residents of a long-term care facility for a minimum of 40 hours.
2. Duties of a medication assistant instructor include, but are not limited to:
   a. Ensuring that the program meets the requirements of this Article;
   b. Planning each learning experience;
   c. Teaching a curriculum that meets the requirements of this Section;
   d. Implementing student and program evaluation policies that meet or exceed the requirements R4-19-801(A)(9) and (10);
   e. Administering not less than three secure unit examinations and one comprehensive final exam consistent with the course curriculum and the requirements of R4-19-801(B)(3)(c) and;
   f. Requiring each student to demonstrate satisfactory performance of all critical elements of each skill in subsection (D)(4) before allowing a student to perform the skill on a patient or resident without the instructor's presence and direct observation;
   g. Being physically present and attentive to students in the classroom and clinical setting at all times during all sessions;
3. A program instructor shall supervise only one student for the first 12 hours of each student's clinical experience; no more than three students for the next 12 hours of each student's clinical experience; and no more than five students for the next 16 hours of each student's clinical experience;

C. Clinical and classroom hour requirements and resources

1. A medication assistant training program shall ensure each graduate received a minimum of 100 hours of total instruction consisting of:
   a. Instructor-led didactic instruction for a minimum of 45 hours;
   b. Instructor supervised skill practice and testing for a minimum of 15 hours;
   c. Instructor supervised medication administration for a minimum of 40 hours in a long-term care facility licensed by the Department of Health Services.
2. A medication assistant program shall ensure that equipment and supplies are in functional condition and sufficient in number for each enrolled student to practice required skills in subsection (D)(3) and (D)(4). At a minimum, the program shall provide the following:
   a. A medication cart similar to one used in the clinical practice facility;
   b. Simulated medications and packaging consistent with resident medications;
   c. Pill crushers, pill splitters, medication cups and hand hygiene supplies;
   d. Medication administration record forms; and
   e. Current drug references, calculator and any other equipment used to administer medications safely.

D. Curriculum: a medication assistant training program shall provide classroom and clinical instruction in each of the following subjects.
1. Role of certified medication assistant (CMA) in Arizona including allowable acts, conditions, delegation and restrictions;
2. Principles of medication administration including:
   a. Terminology,
   b. Laws affecting drug administration,
   c. Drug references,
   d. Medication action,
   e. Medication administration across the human lifespan,
   f. Dosage calculation,
   g. Medication safety,
   h. Asepsis, and
   i. Documentation.
3. Medication properties, uses, adverse effects, administration and care implications for the following types of medications:
   a. Vitamins, minerals, and herbs,
   b. Antimicrobials,
   c. Eye and ear medications,
   d. Skin medications,
   e. Cardiovascular medications,
   f. Respiratory medications,
   g. Gastrointestinal medications,
   h. Urinary system medications and medications to attain fluid balance,
   i. Endocrine/reproductive medications,
   j. Musculoskeletal medications,
   k. Nervous system/sensory system medications and
   l. Psychotropic medications.
4. Medication administration theory and skill practice in administration of:
   a. Oral tablets, capsules, and solutions;
   b. Ear drops, eye drops and eye ointments;
   c. Topical lotions, ointments and solutions;
   d. Rectal suppositories; and
   e. Nasal drops and sprays.
5. Any other topics deemed by the program or the Board as necessary and pertinent to the safe administration of medications.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

R4-19-804. Initial Approval and Re-Approval Training Programs

A. An applicant for initial training program approval shall submit an application packet to the Board at least 90 days before the expected starting date of the program. An applicant shall submit application documents that are unbound, typed or word processed, single-sided, and on white, letter-size paper plus one electronic copy of the entire packet. The Board does not accept notebooks, spiral bound documents, manuals or books.

B. The Board may impose disciplinary action including denial on any training program that has advertised, conducted classes, recruited or collected money from potential students before receiving Board approval or after expiration of approval except for completing instruction to students who enrolled before the expiration date.

C. A program applying for initial approval shall include all of the following in their application packet:
1. Name, address, web address, telephone number, e-mail address and fax number of the program;
2. Identity of all program owners or sponsoring institutions;
3. Name, license number, telephone number, e-mail address and qualifications of the program coordinator as required in R4-19-802;
4. Name, license number, telephone number, e-mail address and qualifications of each program instructor including clinical instructors as required in either R4-19-802 for NA programs or R4-19-803 for CMA programs;
5. Name, telephone number, e-mail address and qualifications any person with administrative oversight of the training program, such as an owner, supervisor or director;
6. Accreditation status of the training program, if any, including the name of the accrediting body and date of last review;
7. Name, address, telephone number and contact person, for all health care institutions which will be clinical sites for the program;
8. Medicare certification status of all clinical sites, if any;
9. Evidence of program compliance with this Article including all of the following:
   a. Program description that includes the length of the program, number of hours of clinical, laboratory and classroom instruction, and program goals consistent with federal, state, and if applicable, private postsecondary requirements;
   b. A list and description of classroom facilities, equipment, and instructional tools the program will provide;
   c. Written curriculum and course schedule according to the provisions of this Article;
   d. A copy of the documentation that the program will use to verify student attendance, instructor presence and skills;
   e. Copy of signed, current clinical contracts;

f. The title, author, name, year of publication, and publisher of all textbooks the program will require students to use;
g. A copy of course policies and any other materials that demonstrate compliance with this Article and the statutory requirements in Title 32, Chapter 15;
h. A plan to evaluate the program that meets requirements in R4-19-801(A)(10);
i. An implementation plan including start date and a description of how the program will provide oversight to ensure all requirements of this Article are met;
j. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
k. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.

D. Re-approval of Training Programs
1. A training program applying for re-approval shall submit a paper and electronic application and accompanying materials to the Board before expiration of the current approval. The applicant program shall ensure that all documents submitted are unbound, typed or word processed, single-sided, and on white, letter-size paper. The Board does not accept notebooks, spiral bound documents, manuals or books. A program or site of a consolidated program that did not hold any classes in the previous approval period is not eligible for renewal of approval.
2. The program shall include the following with the renewal application:
a. A program description and course goals;
b. Name, license number, and qualifications of current program personnel
c. A copy of the current curriculum which meets the applicable requirements in either R4-19-802 or R4-19-803;
d. The dates of each program offering, number of students who have completed the program, and the results of the state-approved written and manual skills tests, including first-time pass rates since the last program review;
e. A copy of current program policies, consistent with R4-19-801;
f. Any change in resources, contracts, or clinical facilities since the previous approval or changes that were not previously reported to the Board;
g. The program evaluation plan with findings regarding required evaluation elements under R4-19-801(A)(10);
h. The title, author, year of publication, and publisher of the textbook used by the program;
i. Copies of the redacted records of one program graduate;
j. The total number of enrolled students and graduates for each year since the last approval;
k. The total number of persons taking the state-approved exam in the past two years; if the number is less than 10, a comprehensive plan to increase program enrollment;
l. A self-assessment checklist of the application contents and their location in the application, on a form provided by the Board; and
m. Other requirements as requested consistent with R4-19-802 for nursing assistant programs and R4-19-803 for medication assistant programs.

E. Upon determination of administrative completeness of either an initial or renewal application, the Board, through its authorized representative, shall schedule and conduct a site visit of a NA program, unless one year only approval is granted on an initial application. The Board may conduct a site visit of a CMA program. Site visits are for the purpose of verifying compliance with this Article. Site visits may be conducted in person or through the use of distance technology.

F. Following an evaluation of the program application and a site visit, if applicable, the Board may approve or renew the approval of the program for two years for a nursing assistant program and up to four years for a medication assistant program, if the program renewal application and site visit findings, as applicable, meet the requirements of this Article, and A.R.S. Title 32, Chapter 15 and renewal is in the best interest of the public. If the program does not meet these requirements, the Board may issue a notice of deficiency under R4-19-805 or take disciplinary action.

G. A program may request an administrative hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for program approval or renewal of approval. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

H. The owner, operator, administrator or coordinator of a program that is denied approval or renewal of approval shall not be eligible to conduct, own or operate a new or existing program for a period of two years from the date of denial.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-805. Deficiencies and Rescission of Program Approval, Unprofessional Program Conduct, Voluntary Termination, Disciplinary Action, and Reinstatement

A. Deficiencies
1. Upon determining that a training program has not complied with this Article, the Board s may issue a written notice of deficiency to the program. The Board shall establish a reasonable period of time, based upon the number and severity of deficiencies, for correction of the deficiencies. Under no circumstances, however, shall the period for correction of deficiencies exceed six months.
a. Within ten days from the date that the notice of deficiency is served, the program shall submit a plan of correction to the Board.
b. The Board, through its authorized representative, may approve the plan of correction or require modifications to the plan if the plan does not adequately address the deficiencies.
c. The Board may conduct periodic evaluations and site visits during the period of correction to ascertain the program’s progress toward correcting the deficiencies.
d. The Board shall evaluate the program’s compliance, at a regularly scheduled Board meeting following the period of correction to determine whether the program has corrected the deficiencies.
2. The Board may rescind the approval of a training program or take other disciplinary action under A.R.S. § 32-

1663, based on the number and severity of violations if the program engages in any of the following:
a. Failure to submit a plan of correction to the Board within ten days of service of a notice of deficiency.
b. Failure to comply with the requirements of this Article within the period set by the Board in the notice of deficiency;
c. Noncompliance with federal, state, or, if applicable, private postsecondary requirements;
d. Failure to permit a scheduled or unannounced Board site visit or failure to allow a Board representative access to program documents, staff or students during a site visit or investigation;
e. Loaning or transferring Board program approval to another entity or facility, including a facility with the same ownership;
f. Offering, advertising, recruiting, or enrolling students in a training program before Board approval is granted;
g. Conducting a training program after expiration of Board approval without filing an application for renewal of approval before the expiration date;
h. For a long-term care based nursing assistant program, charging for any portion of the program;
i. Committing an act of unprofessional program conduct.

B. Unprofessional program conduct. A notice of deficiency or a disciplinary action including denial of approval or rescission of approval may be issued against a training program for any of the following acts of unprofessional conduct:
1. Failing to maintain minimum standards of acceptable and prevailing educational practice;
2. Any violation of this Article;
3. Utilization of students as labor rather than for educational purposes in a health care facility;
4. Failing to follow the program's or parent institution's mission or goals, program design, objectives, or policies;
5. Failing to provide the classroom, laboratory or clinical teaching hours required by this Article or described in the program description;
6. Enrolling students in a program without adequate faculty, facilities, or clinical experiences, as required by this Article;
7. Permitting unqualified persons to supervise teaching-learning experiences in any portion of the program;
8. Failing to comply with Board requirements within designated timeframes;
9. Engaging in fraud, misrepresentation or deceit in advertising, recruiting, promoting or implementing the program;
10. Making a false, inaccurate or misleading statement to the Board or the Board's designee in the course of an investigation, or on any application or information submitted to the Board or on the program's public website;
11. Failing to supervise students in the clinical setting in accordance with this Article or allowing more than the maximum students per clinical instructor prescribed in this Article;
12. Engaging in any other conduct that gives the Board reasonable cause to believe the program's conduct may be a threat to the safety or welfare of students, faculty, patients or the public.
13. Failing to:
    a. Furnish in writing a full and complete explanation of a matter reported pursuant to A.R.S. § 32-1664, or
    b. Respond to a subpoena issued by the Board;
14. Failing to take appropriate action to safeguard a patient's or resident's welfare or follow policies and procedures of the program or clinical site designed to safeguard the patient or resident;
15. Failing to promptly provide make-up classroom, laboratory, or clinical hours, with adequate notice to students, equivalent educational content, and reasonable scheduling, when shortages of hours were caused by the program or program instructors;
16. Failing to promptly remove, or adequately discipline or train, program instructors whose conduct violates this Article or may be a threat to the safety or welfare of students, patients, residents, or the public.
17. Engaging in retaliatory, threatening, or intimidating conduct toward current, prospective or former program students, instructors, other staff, or the public, who make complaints about any aspect of the program to program staff or the Board.

C. Disciplinary Action. If the Board issues disciplinary action against the approval of a nursing assistant or medication assistant training program, the program may request a hearing by filing a written request with the Board within 30 days of service of the Board's order. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.

D. Voluntary termination
1. If a training program is voluntarily terminating before renewal, the program shall submit a written notice of termination to the Board.
2. The program coordinator shall continue the training program, including retaining necessary instructors, until the last student is transferred or has completed the training program.
3. Within 15 days after the termination of a training program, the administrator or a program representative shall notify the Board in writing of the permanent location and availability of all program records.
4. A program that fails to renew its approval with the Board shall be considered voluntarily terminated unless there is a complaint against the program.

E. Re-issuance of approval
1. If the Board revokes the approval of a training program, the owner, administrator or coordinator of the revoked program may apply for re-issuance of program approval after a period of two years by complying with the requirements of this Article. The owner, administrator and coordinator of a program that had its approval revoked shall not own, administer or coordinate a training program for a period of two years from the date of program revocation.
2. If the Board, in lieu of revocation, accepts a voluntarily surrender of a program's approval, the program's owner, administrator or coordinator may apply for reissuance of the program's approval after a period of two years. The owner, administrator and coordinator of a program that voluntarily surrendered its approval shall not own, administer or coordinate a training program for a period of two years from the date of the surrender of approval.
3. A training program owner, administrator or coordinator whose program approval was voluntarily surrendered or that had its approval rescinded or revoked shall submit a complete reissuance application packet in writing that contains all of the information and documentation required of programs applying for initial approval. In addition, the program shall provide substantial evidence that the basis for revocation or voluntary surrender no

longer exist and that reissuance of program approval is in the best interest of the public.

4. The Board may reissue approval to a training program that meets the requirements of this Article. A program that is denied reissuance of approval may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying reissuance. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3).

R4-19-806. Initial Nursing Assistant Licensure (LNA) and Medication Assistant Certification

A. An applicant for initial licensed nursing assistant (LNA) licensure or CMA certification shall submit the following to the Board:

1. A verified application on a form furnished by the Board that provides the following information about the applicant:
   a. Full legal name and any and all former names used by the applicant;
   b. Current mailing address, including county of residence, e-mail address and telephone number;
   c. Place and date of birth;
   d. Social Security number;
   e. Ethnic category and marital status at the applicant's discretion;
   f. Educational background, including the name of the training program attended, and date of graduation and for medication assistant, proof of high school or equivalent education completion as required in A.R.S. § 32-1650-02(A)(4);
   g. Current employer, including address and telephone number, type of position, and dates of employment, if employed in health care;
   h. A list of all states in which the applicant is or has been included on a nursing assistant registry or been licensed or certified as a nursing or medication assistant and the license or certificate number, if any;
   i. For medication assistant, proof of LNA licensure and 960 hours or 6 months full time employment as a CNA or LNA in the past year, as required in A.R.S. § 32-1650.02;
   j. Responses to questions regarding the applicant’s background on the following subjects:
      i. Current investigation or pending disciplinary action by a nursing, nursing assistant or medication assistant regulatory agency in the United States or its territories;
      ii. Action taken on a nursing assistant or medication assistant license, certification or registry designation in any other state;
      iii. Felony conviction or conviction of an undesignated or other similar offense and the date of absolute discharge of sentence;
      iv. Unprofessional conduct as defined in A.R.S. § 32-1601;
      v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant’s background;
2. Proof of satisfactory completion of a nursing assistant or medication assistant training program that meets the requirements of this Article;
3. Proof of United States citizenship or alien status as specified in A.R.S. § 41-1080;
4. For LNA applicants, one or more fingerprint cards or fingerprints
5. For CMA applicants, one or more fingerprint cards or fingerprints, as required by A.R.S. § 32-1606(B)(15) if a fingerprint background report has not been received by the Board in the past two years; and
6. Applicable fees under A.R.S. § 32-1643 and R4-19-808.

B. An applicant for licensure as a nursing assistant shall submit a passing score on a Board-approved nursing assistant examination and provide one of the following criteria:

1. Proof that the applicant has completed a Board-approved nursing assistant training program within the past two years:
2. Proof that the applicant has completed a nursing assistant training program approved in another state or territory of the United States consisting of at least 120 hours within the past two years;
3. Proof that the applicant has completed a nursing assistant program approved in another state or territory of the United States of at least 75 hours of instruction in the past two years and proof of working as a nursing assistant for an additional number of hours in the past two years that together with the hours of instruction, equal at least 120 hours;
4. Proof that the applicant either holds a nursing license in good standing in the U.S. or territories, has graduated from an approved nursing program, or otherwise meets educational requirements for a registered or practical nursing license in Arizona;
5. Documentation sent directly from the program that the applicant successfully completed a nursing course or courses as part of an RN or LPN program approved in either this or another state in the last 2 years that included:
   a. Didactic content regarding long-term care clients; and
   b. Forty hours of instructor-supervised direct patient care in a long-term care or comparable facility; or
6. Documentation of a minimum of 100 hours of military health care training, as evidenced by military records, and proof of working in health care within the past 2 years.

C. An applicant for medication assistant shall meet the qualifications of A.R.S. §§ 32-1650.02 and 32-1650.03. An applicant who wishes to use part of a nursing program in lieu of completion of a Board approved medication assistant training program under A.R.S. § 32-1650.02 shall submit the following:

1. An official transcript from a Board approved nursing program showing a grade of C or higher in a 45 hour or 3 semester credit, or equivalent, pharmacology course; and
2. A document signed by both the applicant’s clinical instructor and the nursing program administrator verifying that the applicant completed 40 hours of supervised medication administration in a long-term care facility.

D. Certifying Exam

1. A LNA applicant shall take and pass both portions of the certifying exam within 2 years:
   a. Of program completion for graduates of nursing assistant programs approved in Arizona or another state, or
   b. Of the date of the first test for all other applicants.

2. A CMA applicant shall take and pass both portions of the certifying exam within one year:
   a. Of program completion for graduates of Board-approved programs, or
   b. Of the date of the first test for all other applicants.
3. An applicant may re-take the failed portion or portions of a certifying exam, under conditions prescribed in written policy by the exam vendor, until a passing score is achieved or their time expires under subsections (D)(1) or (2).

E. An applicant who does not take or pass an examination within the time period specified in subsection (D) shall enroll in and successfully complete a Board approved training program in the certification category before being permitted to retake an examination.

F. The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article and A.R.S. Title 32, Chapter 15 if licensure or certification is in the best interest of the public.

G. An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

H. Medication assistant certification expires when nursing assistant licensure expires.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-807. Nursing Assistant Licensure and Medication Assistant Certification by Endorsement

A. An applicant for LNA or CMA by endorsement shall submit all of the information, documentation, and fees required in R4-19-806.

B. An applicant who has been employed for less than one year shall list all employers during the past two years.

C. An applicant for nursing assistant licensure by endorsement shall meet the training program criteria in R4-19-806(B). An applicant for medication assistant endorsement shall, in addition, provide evidence satisfactory completion of a training program that meets the requirements of A.R.S. § 32-1650.04 and pass a competency examination as prescribed in A.R.S. § 32-1650.03.

D. In addition to the other requirements of this Section, an applicant for licensure or certification by endorsement shall provide evidence that the applicant:
1. Is or has been, within the last 2 years, listed as active on a nursing assistant register or a substantially equivalent register by another state or territory of the United States with no substantiated complaints or discipline; and
2. For nursing assistant, meets one or more of the following criteria:
   a. Regardless of job title or description, performed nursing assistant activities for a minimum of 160 hours for an employer or as part of a nursing or allied health program in the past two years; or
   b. Has completed a nursing assistant training program and passed the required examination within the past two years.
3. In addition to the above requirements, for medication assistant certification, meets the practice requirements of A.R.S. § 32-1650.04 and pays applicable fees under R4-19-808.

E. The Board may license a nursing assistant or certify a medication assistant applicant who meets the applicable criteria in this Article if certification is in the best interest of the public.

F. An applicant who is denied licensure or certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for licensure or certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-808. Fees Related to Certified Medication Assistant

A. The Board shall collect the following fees related medication assistant certification:
1. Initial application for certification by exam, $50.00.
2. Fingerprint processing, $50.00.
3. Application for certification by endorsement, $50.00.

B. If an individual or entity submits a dishonored check, draft order or note, the Board may collect, from the provider of the instrument, the amount allowed under A.R.S. § 44-6852.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 5004, effective November 15, 2002 (Supp. 02-4). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Section repealed; new Section made by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-809. Nursing Assistant Licensure and Medication Assistant Certificate Renewal

A. An applicant for renewal of a LNA license or a CMA certificate shall:
1. Submit a verified application to the Board on a form furnished by the Board that provides all of the following information about the applicant:
   a. Full legal name, mailing address including county of residence, e-mail address and telephone number;
   b. Marital status and ethnicity at the applicant's discretion;
   c. Current health care employer including name, address, telephone number, dates of employment and type of setting;
   d. If the applicant fails to meet the practice requirements in subsections (A)(2) for nursing assistant or (A)(3) for medication assistant renewal, documentation that the applicant has completed a Board-approved training program for the licensure or certification sought and passed both the written and manual skills portions of the competency examination within the past two years;
      e. Responses to questions that address the applicant's background:

i. Any investigation or disciplinary action by a nursing regulatory agency or nursing assistant regulatory agency in the United States or its territories not previously disclosed by the applicant to the Board;
ii. Felony conviction or conviction of undesignated offense and date of absolute discharge of sentence since certified or last renewed, and
iii. Unprofessional conduct committed by the applicant as defined in A.R.S. § 32-1601 since the time of last renewal and not previously disclosed by the applicant to the Board;
iv. Any disciplinary action or investigation related to the applicant's nursing license or nursing assistant or medication assistant license, certificate or registry listing by any other state regulatory agency since the last renewal and not previously disclosed to the Board.
v. Explanation and supporting documentation for each affirmative answer to questions regarding the applicant's background;

2. For LNA renewal, employment as a nursing assistant, performing nursing assistant tasks for an employer or the applicant's performance of nursing assistant activities as part of a nursing or allied health program for a minimum of 160 hours every two years since the last license or certificate was issued, or
3. For CMA renewal, employment as a medication assistant for a minimum of 160 hours within the last 2 years, and
4. Applicable fees under A.R.S. § 32-1643 and R4-19-808.

B. A nursing assistant license and a medication assistant certificate expire simultaneously every 2 years on the last day of the licensee's birth date month. If a licensee fails to timely renew the license or certificate, the licensee shall;
1. Not work or practice as a LNA until the Board issues a renewal license and stall not practice as a CMA until the Board issues a renewal certificate; and
2. Pay any late fee imposed by the Board.

C. If an applicant holds a license or held a license or certificate that has been or is currently revoked, surrendered, denied, suspended or placed on probation in another jurisdiction, the applicant is not eligible to renew or reactivate the applicant's Arizona license or certificate until a review or investigation has been completed and a decision made by the Board.

D. The Board may renew an LNA license and CMA certificate of an applicant who meets the criteria established in statute and this Article. An applicant who is denied renewal of a license or certificate may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying renewal of the license or certificate. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-810. Certified Nursing Assistant Register; Licensed Nursing Assistant Register

A. The Board shall maintain a Certified Nursing Assistant (CNA) Registry and a Licensed Nursing Assistant (LNA) Registry. All individuals listed in either Registry shall provide proof to the Board, either directly or through the Board's test vendor, of legal presence in the United States as specified in A.R.S. § 41-1080. Both Registries meet the requirements of A.R.S. § 32-1601 (B)(11).
1. To be placed on the CNA Registry, the applicant shall either:
   a. Have successfully completed an approved nursing assistant training program and passed the nursing assistant written and manual skills competency evaluation within the past two years; or
   b. For endorsement, be listed on another state's nursing assistant registry.
2. To renew CNA Registry status under A.R.S. § 32-1642 (E), an applicant shall submit an application that includes verified statements of:
   a. Whether applicant has performed nursing assistant or nursing related services for compensation for at least eight hours within the past 24 months, and
   b. Whether the applicant's listing on any registry in any other state includes documented findings of abuse, neglect or misappropriation of property.
3. The Executive Director shall include the following information in the CNA Register for each registered individual:
   a. Full legal name and any other names used;
   b. Address of record;
   c. County of residence;
   d. The date of initial placement on the register;
   e. Dates and results of both the written and manual skills portions of the nursing assistant competency examination;
6. Date of expiration of registration, if applicable;
7. Any substantiated complaints of abuse, neglect or misappropriation of funds; and
8. Registry status such as active or expired, as applicable.

B. An applicant who meets qualifications under subsection (A)(1) and the licensure requirements of this Article shall be placed on an LNA Registry. The Executive Director shall include the following information in the Licensed Nursing Assistant Register for each licensed individual:
1. Information contained in subsection (A)(3);
2. Existence of pending investigation, if applicable;
3. Status of the license and any Board actions on the license, such as active, denied, expired, or revoked, as applicable.

C. The Executive Director shall include the following information in the applicable Register for an individual if the Board, or the United States Department of Health and Human Services (HHS), or the Arizona Department of Health Services finds that the individual has violated relevant law:
1. For a finding by the Board or HHS, the Executive Director shall include:
   a. The finding, including the date of the decision, and a reference to each statute, rule, or regulation violated; and
   b. The sanction, if any, including the date of action and the duration of action, if time-limited.
2. For a finding by the Arizona Department of Health Services, the Executive Director shall include:
   a. The allegation;
   b. Documentation of the investigation, including the:
      i. Nature of allegation, and
      ii. Description of evidence supporting the finding;

c. Date of hearing, if any, or the date that the complaint was substantiated;
d. Statement disputing the allegation, if any;
e. The finding, including the date of the decision and a reference to each statute or rule violated; and
f. The sanction, including the dates of action and the duration of the sanction, if time-limited.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-811. Application for Duplicate License or Certificate

A. A licensee or CMA certificate holder shall report a lost or stolen license or certificate to the Board in writing or electronically through the Board's website, within 30 days of discovery of the loss.

B. An individual requesting a duplicate license or certificate shall file an application on a form provided by the Board and pay the applicable fee under A.R.S. § 32-1643(A)(14).

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-812. Change of Name or Address

A. An applicant, CNA, LNA, or CMA certificate holder shall notify the Board, in writing or electronically through the Board's website of any legal name change within 30 days of the change, and submit a copy of the official document verifying the name change.

B. An applicant, CNA, LNA, or CMA certificate holder shall notify the Board in writing or electronically through the Board's website of any change of address within 30 days of the address change.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-813. Performance of Nursing Assistant Tasks; Performance of Medication Assistant Tasks

A. A CNA or LNA may perform the following tasks as delegated by a licensed nurse:
1. Tasks for which the nursing assistant has been trained through the curriculum identified in R4-19-802, and
2. Tasks learned through inservice or educational training if the task meets the following criteria and the nursing assistant has demonstrated competence performing the task:
   a. The task can be safely performed according to clear, exact, and unchanging directions;
   b. The task poses minimal risk to the patient or resident and the consequences of performing the task improperly are not life-threatening or irreversible;
   c. The results of the task are reasonably predictable; and
   d. Assessment, interpretation, or decision-making is not required during the performance or at the completion of the task.

B. A licensed nursing assistant who is also certified as a medication assistant under A.R.S. § 32-1650.02 may administer medications under the conditions imposed by A.R.S. § § 32-1650 through 32-1650.07.

C. A licensed nursing assistant under this Article shall:
1. Recognize the limits of the licensee's personal knowledge, skills, and abilities;
2. No change
3. Inform the registered nurse, licensed practical nurse, or another person authorized to delegate the task about the licensee's ability to perform the task before accepting the assignment;
4. Accept delegation, instruction, and supervision from a licensed nurse or another person authorized to delegate a task;
5. Not perform any task that requires a judgment based on nursing knowledge;
6. Acknowledge responsibility for personal actions necessary to complete an accepted assigned task;
7. Follow the plan of care, if available;
8. Observe, report, and record signs, symptoms, and changes in the patient or resident's condition in an ongoing and timely manner; and
9. Retain responsibility for all assigned tasks without delegating any tasks to another person.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

R4-19-814. Standards of Conduct for Licensed Nursing Assistants and Certified Medication Assistants

For purposes of A.R.S. § 32-1601(24)(d), a practice or conduct that is or might be harmful or dangerous to the health of a patient or the public and constitutes a basis for disciplinary action on a LNA license and a CMA certificate includes the following:
1. Failing to maintain professional boundaries or engaging in a dual relationship with a patient, resident, or any member of the patient's or resident's family;
2. Engaging in sexual conduct with a patient, resident, or any member of the patient's or resident's family who does not have a pre-existing relationship with the licensee or any conduct while on duty or in the presence of a patient or resident that a reasonable person would interpret as sexual;
3. Leaving an assignment or abandoning a patient or resident who requires care without properly notifying the immediate supervisor;
4. Failing to accurately and timely document care and treatment provided to a patient or resident, including, for a CMA, medications administered or not administered;
5. Falsifying or making a materially incorrect entry in a health care record;
6. Failing to follow an employer's policies and procedures, designed to safeguard the patient or resident;
7. Failing to take action to protect a patient or resident whose safety or welfare is at risk from potential or actual

incompetent health care practice, or to report the practice to the immediate supervisor or a facility administrator;
8. Failing to report signs, symptoms, and changes in patient or resident conditions to the immediate supervisor in an ongoing and timely manner;
9. Violating the rights or dignity of a patient or resident;
10. Violating a patient or resident's right of privacy by disclosing confidential information or knowledge concerning the patient or resident, unless disclosure is otherwise required by law;
11. Neglecting or abusing a patient or resident physically, verbally, emotionally, or financially;
12. Failing to immediately report to a supervisor and the Board any observed or suspected abuse or neglect, including a resident or patient's report of abuse or neglect;
13. Soliciting, or borrowing, property or money from a patient or resident, or any member of the patient's or resident's family, or the patient's or resident's guardian;
14. Soliciting or engaging in the sale of goods or services unrelated to the licensee's health care assignment with a patient or resident, or any member of the patient or resident's immediate family, or guardians;
15. Removing, without authorization, any money, property, or personal possessions, or requesting payment for services not performed from a patient, resident, employer, co-worker, or member of the public.
16. Repeated use or being under the influence of alcohol, medication, or any other substance to the extent that judgment may be impaired and practice detrimentally affected or while on duty in any work setting;
17. Accepting or performing patient or resident care tasks that the licensee lacks the education, competence or legal authority to perform;
18. Removing, without authorization, narcotics, drugs, supplies, equipment, or medical records from any work setting;
19. Obtaining, possessing, using, or selling any narcotic, controlled substance, or illegal drug in violation of any employer policy or any federal or state law;
20. Permitting or assisting another person to use the licensee's license or CMA certificate holder's certificate or identity for any purpose;
21. Making untruthful or misleading statements in advertisements of the individual's practice as a licensed nursing assistant or certified medication assistant;
22. Offering or providing licensed nursing assistant or certified medication assistant services for compensation without a designated registered nurse supervisor;
23. Threatening, harassing, or exploiting an individual;
24. Using violent or abusive behavior in any work setting;
25. Failing to cooperate with the Board during an investigation by:
    a. Not furnishing in writing a complete explanation of a matter reported under A.R.S. § 32-1664;
    b. Not responding to a subpoena or written request for information issued by the Board;
    c. Not completing and returning a Board-issued questionnaire within 30 days; or
    d. Not informing the Board of a change of address or phone number within 10 days of each change;
26. Cheating on the competency exam or providing false information on an initial or renewal application for licensure or certification;
27. Making a false or inaccurate statement to the Board or the Board's designee during the course of an investigation;
28. Making a false or misleading statement on a nursing assistant, medication assistant or health care related employment or credential application;
29. If an applicant, licensee or CMA certificate holder is charged with a felony or a misdemeanor, involving conduct that may affect patient safety, failing to notify the Board, in writing, within 10 working days of being charged under A.R.S. § 32-3208. The applicant, licensee or CMA certificate holder shall include the following in the notification:
    a. Name, current address, telephone number, Social Security number, and license and certificate number, if applicable;
    b. Date of the charge; and
    c. Nature of the offense;
30. Failing to notify the Board, in writing, of a conviction for a felony or an undesignated offense within 10 days of the conviction. The applicant, licensee or CMA certificate holder shall include the following in the notification:
    a. Name, current address, telephone number, Social Security number, and license and CMA certificate number, if applicable;
    b. Date of the conviction;
    c. Nature of the offense;
31. For a medication assistant, performance of any acts associated with medication administration not specifically authorized by A.R.S. § 32-1650 et.seq; and
32. Practicing in any other manner that gives the Board reasonable cause to believe that the health of a patient, resident, or the public may be harmed.
33. Violation of any other state or federal laws, rules or regulations.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 11 A.A.R. 4254, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 14 A.A.R. 4621, effective January 31, 2009 (Supp. 08-4). Antiquated statute reference in opening subsection revised at the request of Board under A.R.S. § 41-1011(C), Office File No. M11-189, filed May 16, 2011 (Supp. 11-2). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2012, Ch. 152, § 1, provides for A.R.S. references to be corrected to reflect the renumbering of definitions. Therefore the A.R.S. citation in the opening subsection was updated. Agency request filed July 12, 2012, Office File No. M12-242 (Supp. 12-3). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2). A.R.S. Section reference updated under subsection under Laws 2015, Ch. 262, effective July 1, 2016 (Laws 2015, Ch. 262, § 23) at file number R16-186 (Supp. 16-3).

R4-19-815. Reissuance or Subsequent Issuance of a Nursing Assistant License or Medication Assistant Certificate

An applicant whose application is denied or a licensee or CMA certificate holder whose certificate or license is revoked in accordance with A.R.S. § 32-1663, may reapply to the Board after a period of five years from the date the license, certificate or application is revoked or denied. A licensee or CMA certificate holder who voluntarily surrenders a certificate may reapply to the Board after no less than three years from the date the certificate is surrendered. The Board may issue or re-issue a nursing assistant license or med-

ication assistant certificate under the following terms and conditions:

1. An applicant shall submit documentation showing that the basis for denial, revocation or voluntary surrender has been removed and that the issuance or re-issuance of licensure or CMA certification will no longer constitute a threat to the public health or safety. The Board may require an applicant to be tested for competency, or retake and successfully complete a Board approved training program and pass the required examination, all at the applicant's expense.
2. The Board shall consider the application, and may designate a time for the applicant to address the Board at a regularly scheduled meeting.
3. After considering the application, the Board may:
   a. Grant certification, or
   b. Deny the application.
4. An applicant who is denied issuance or reinstatement of licensure or CMA certification may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying issuance or reinstatement of nursing assistant licensure or medication assistant certification. Hearings shall be conducted in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 4 A.A.C. 19, Article 6.

Historical Note

New Section adopted by final rulemaking at 6 A.A.R. 757, effective February 4, 2000 (Supp. 00-1). Amended by final rulemaking at 20 A.A.R. 1859, effective September 8, 2014 (Supp. 14-3). Amended by exempt rulemaking at 22 A.A.R. 1900, effective July 1, 2016 (Supp. 16-2).

32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. "Absolute discharge from the sentence" means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.

2. "Approval" means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.

3. "Board" means the Arizona state board of nursing.

4. "Certified nursing assistant" means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a licensed nursing assistant.

5. "Certified registered nurse" means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

6. "Certified registered nurse anesthetist" means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

7. "Clinical nurse specialist" means a registered nurse who:

(a) Is certified by the board as a clinical nurse specialist.

(b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.

(c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.

(d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.

(ii) Managing directly and indirectly a client's physical and psychosocial health status.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.

(iv) Developing, planning and guiding programs of care for populations of patients.

(v) Making independent nursing decisions to solve complex client care problems.

(vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.

(vii) Prescribing and dispensing durable medical equipment.

(viii) Consulting with or referring a client to other health care providers based on assessment of the client's health status and needs.

(ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.

(x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.

8. "Conditional license" or "conditional approval" means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

9. "Delegation" means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

10. "Disciplinary action" means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

(a) A civil penalty for each violation of this chapter, not to exceed one thousand dollars for each violation.

(b) Restitution made to an aggrieved party.

(c) A decree of censure.

(d) A conditional license or a conditional approval that fixed a period and terms of probation.

(e) Limited licensure.

(f) Suspension of a license, a certificate or an approval.

(g) Voluntary surrender of a license, a certificate or an approval.

(h) Revocation of a license, a certificate or an approval.

11. "Health care institution" has the same meaning prescribed in section 36-401.

12. "Licensed nursing assistant" means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a certified nursing assistant.

13. "Licensee" means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

14. "Limited license" means a license that restricts the scope or setting of a licensee's practice.

15. "Medication order" means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication.

16. "Practical nurse" means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

17. "Practical nursing" includes the following activities that are performed under the supervision of a physician or a registered nurse:

(a) Contributing to the assessment of the health status of individuals and groups.

(b) Participating in the development and modification of the strategy of care.

(c) Implementing aspects of the strategy of care within the nurse's scope of practice.

(d) Maintaining safe and effective nursing care that is rendered directly or indirectly.

(e) Participating in the evaluation of responses to interventions.

(f) Delegating nursing activities within the scope of practice of a practical nurse.

(g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

18. "Presence" means within the same room or an adjoining room or within the same surgical or obstetrical suite.

19. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

20. "Registered nurse practitioner" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.

(d) Has an expanded scope of practice within a specialty area that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health status of clients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex client care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience and planning for situations beyond the nurse's knowledge, educational preparation and expertise by consulting with or referring clients to other health care providers when appropriate.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

21. "Registered nursing" includes the following:

(a) Diagnosing and treating human responses to actual or potential health problems.

(b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.

(c) Assessing the health status of individuals and groups.

(d) Establishing a nursing diagnosis.

(e) Establishing goals to meet identified health care needs.

(f) Prescribing nursing interventions to implement a strategy of care.

(g) Delegating nursing interventions to others who are qualified to do so.

(h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.

(i) Evaluating responses to interventions.

(j) Teaching nursing knowledge and skills.

(k) Managing and supervising the practice of nursing.

(l) Consulting and coordinating with other health care professionals in the management of health care.

(m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.

22. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).

23. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.

24. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.

(b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.

(d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.

(e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.

(f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.

(g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.

(h) Committing an act that deceives, defrauds or harms the public.

(i) Failing to comply with a stipulated agreement, consent agreement or board order.

(j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.

(k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:

(i) Incompetent to practice.

(ii) Guilty of unprofessional conduct.

(iii) Mentally or physically unable to safely practice nursing or to perform nursing related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.

(l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.

(m) Cheating or assisting another to cheat on a licensure or certification examination.

32-1605.01. Executive director; compensation; powers; 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 is eligible to receive compensation set by the board within the range determined under section 38-611.

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

1. Perform the administrative duties of the board.

2. Subject to title 41, chapter 4, article 4, employ personnel needed to carry out the functions of the board.

3. Issue and renew temporary and permanent licenses, certificates and prescribing or dispensing authority.

4. Issue single state and multistate licenses pursuant to this chapter to applicants who are not under investigation and who meet the qualifications for licensure prescribed in this chapter.

5. Perform other duties as directed by the board.

6. Register certified nursing assistants and maintain a registry of licensed nursing assistants and certified nursing assistants.

7. On behalf of the board, enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency. A licensee who materially fails to comply with a program requirement shall be reported to the board and terminated from the confidential program. Any records of a licensee who is terminated from a confidential program are no longer confidential or exempt from the public records law. Notwithstanding any law to the contrary, stipulated agreements are not public records if the following conditions are met:

(a) The licensee voluntarily agrees to participate in the confidential program.

(b) The licensee complies with all treatment requirements or recommendations, including participation in alcoholics anonymous or an equivalent twelve step program and nurse support group.

(c) The licensee refrains from the practice of nursing until the return to nursing has been approved by the treatment program and the executive director or the executive director's designee.

(d) The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.

(e) The licensee's nursing employer is notified of the licensee's chemical dependency and participation in the confidential program and is provided a copy of the stipulated agreement.

8. Approve nursing assistant training programs that meet the requirements of this chapter.

C. If the board adopts a substantive policy statement pursuant to section 41-1091 and the executive director or designee reports all actions taken pursuant to this subsection to the board at the next regular board meeting, the executive director or designee may:

1. Dismiss a complaint pursuant to section 32-1664 if the complainant does not wish to address the board and either there is no evidence substantiating the complaint or, after conducting an investigation, there is insufficient evidence that the regulated party violated this chapter or a rule adopted pursuant to this chapter.

2. Enter into a stipulated agreement with the licensee or certificate holder for the treatment, rehabilitation and monitoring of the licensee's or certificate holder's abuse or misuse of a chemical substance.

3. Close complaints resolved through settlement.

4. Issue letters of concern.

5. In lieu of a summary suspension hearing, enter into a consent agreement if there is sufficient evidence that the public health, safety or welfare imperatively requires emergency action.

D. The executive director may accept the voluntary surrender of a license, certificate or approval to resolve a pending complaint that is subject to disciplinary action. The voluntary surrender or revocation of a license, certificate or approval is a disciplinary action, and the board shall report this action if required by federal law.

32-1606. Powers and duties of board

A. The board may:

1. Adopt and revise rules necessary to carry into effect this chapter.

2. Publish advisory opinions regarding registered and practical nursing practice and nursing education.

3. Issue limited licenses or certificates if it determines that an applicant or licensee cannot function safely in a specific setting or within the full scope of practice.

4. Refer criminal violations of this chapter to the appropriate law enforcement agency.

5. Establish a confidential program for the monitoring of licensees who are chemically dependent and who enroll in rehabilitation programs that meet the criteria established by the board. The board may take further action if the licensee refuses to enter into a stipulated agreement or fails to comply with its terms. In order to protect the public health and safety, the confidentiality requirements of this paragraph do not apply if the licensee does not comply with the stipulated agreement.

6. On the applicant's or regulated party's request, establish a payment schedule with the applicant or regulated party.

7. Provide education regarding board functions.

8. Collect or assist in the collection of workforce data.

9. Adopt rules for conducting pilot programs consistent with public safety for innovative applications in nursing practice, education and regulation.

10. Grant retirement status on request to retired nurses who are or were licensed under this chapter, who have no open complaint or investigation pending against them and who are not subject to discipline.

11. Accept and spend federal monies and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These monies do not revert to the state general fund at the end of the fiscal year.

B. The board shall:

1. Approve regulated training and educational programs that meet the requirements of this chapter and rules adopted by the board.

2. By rule, establish approval and reapproval processes for nursing and nursing assistant training programs that meet the requirements of this chapter and board rules.

3. Prepare and maintain a list of approved nursing programs for the preparation of registered and practical nurses whose graduates are eligible for licensing under this chapter as registered nurses or as practical nurses if they satisfy the other requirements of this chapter and board rules.

4. Examine qualified registered and practical nurse applicants.

5. License and renew the licenses of qualified registered and practical nurse applicants and licensed nursing assistants who are not qualified to be licensed by the executive director.

6. Adopt a seal, which the executive director shall keep.

7. Keep a record of all proceedings.

8. For proper cause, deny or rescind approval of a regulated training or educational program for failure to comply with this chapter or the rules of the board.

9. Adopt rules for the approval of credential evaluation services that evaluate the qualifications of applicants who graduated from an international nursing program.

10. Determine and administer appropriate disciplinary action against all regulated parties who are found guilty of violating this chapter or rules adopted by the board.

11. Perform functions necessary to carry out the requirements of nursing assistant and nurse aide training and competency evaluation program as set forth in the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683). These functions shall include:

(a) Testing and registration of certified nursing assistants.

(b) Testing and licensing of licensed nursing assistants.

(c) Maintaining a list of board-approved training programs.

(d) Maintaining a registry of nursing assistants for all certified nursing assistants and licensed nursing assistants.

(e) Assessing fees.

12. Adopt rules establishing those acts that may be performed by a registered nurse practitioner in collaboration with a licensed physician, except that the board does not have authority to decide scope of practice relating to abortion as defined in section 36-2151.

13. Adopt rules establishing educational requirements for the certification of school nurses.

14. Publish copies of board rules and distribute these copies on request.

15. Require each applicant for initial licensure or certification to submit a full set of fingerprints to the board for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

16. Except for a licensee who has been convicted of a felony that has been designated a misdemeanor pursuant to section 13-604, revoke a license of a person, revoke the multistate licensure privilege of a person pursuant to section 32-1669 or not issue a license or renewal to an applicant who has one or more felony convictions and who has not received an absolute discharge from the sentences for all felony convictions three or more years before the date of filing an application pursuant to this chapter.

17. Establish standards for approving and reapproving nurse practitioner and clinical nurse specialist programs and provide for surveys of nurse practitioner and clinical nurse specialist programs as it deems necessary.

18. Provide the licensing authorities of health care institutions, facilities and homes any information the board receives regarding practices that place a patient's health at risk.

19. Limit the multistate licensure privilege of any person who holds or applies for a license in this state pursuant to section 32-1668.

20. Adopt rules to establish competency standards for obtaining and maintaining a license.

21. Adopt rules for the qualification and certification of clinical nurse specialists.

22. Adopt rules for approval and reapproval of refresher courses for nurses who are not currently practicing.

23. Maintain a list of approved medication assistant training programs.

24. Test and certify medication assistants.

25. Maintain a registry and disciplinary record of medication assistants who are certified pursuant to this chapter.

C. The board may conduct an investigation on receipt of information that indicates that a person or regulated party may have violated this chapter or a rule adopted

pursuant to this chapter. Following the investigation, the board may take disciplinary action pursuant to this chapter.

D. The board may limit, revoke or suspend the privilege of a nurse to practice in this state granted pursuant to section 32-1668.

E. Failure to comply with any final order of the board, including an order of censure or probation, is cause for suspension or revocation of a license or a certificate.

F. The president or a member of the board designated by the president may administer oaths in transacting the business of the board.

32-1650.01. Medication assistant training programs; requirements

A. The board shall approve medication assistant training programs pursuant to this section and rules adopted by the board.Â An entity that applies for approval of a medication assistant training program must be either:

1. A postsecondary education institution in this state that is accredited by an accrediting agency recognized by the United States department of education.

2. A postsecondary school that is licensed by the state board for private postsecondary education.

3. A long-term care facility that is licensed by the department of health services.

B. An applicant for a medication assistant training program must:

1. Submit an application on a form and in a manner prescribed by the board that shows compliance with this chapter and board rules and that is accompanied by a fee prescribed by the board by rule.

2. Implement a minimum one hundred hour curriculum that is consistent with the curriculum requirements of a board pilot program that allows licensed nursing assistants to administer medication or that is specified by the board by rule.

3. Schedule classroom instruction so that there are not more than four hours of classroom instruction in any one day.

4. Implement admission criteria that are consistent with the requirements of section 32-1650.02.

5. Screen potential students for mathematics and reading comprehension skills that are necessary to understand written material and to safely administer medications.

6. Administer at least three separate unit examinations and a comprehensive final examination that students must pass to progress in the program.

7. Provide course policies regarding attendance, clinical supervision, course completion requirements, passing examination scores and makeup examinations.

8. Ensure that each course instructor has an unrestricted registered nursing license or multistate privilege and at least forty hours of experience administering medications in a licensed long-term care facility.

9. Meet other requirements as specified by the board by rule.

C. The board or its authorized agent shall review the application and provide a written analysis of the applicant's compliance with the requirements in this section and board rules.Â The board shall notify the applicant of any deficiencies in the application.Â If the board determines that the program meets the requirements prescribed in this chapter and board rules and that approval is in the best interest of the public, the board shall approve the program for a period of not more than four years.

D. The board's authorized employees or representatives periodically may review and conduct a site visit of all approved medication assistant training programs in this state and file written reports of these reviews or site visits with the board. If the board determines that an approved medication assistant training program is not maintaining the required standards, it shall immediately give written notice to the program specifying the defects.Â If the defects are not corrected within a reasonable time as determined by the board, the board may take either of the following actions:

1. Restrict the program's ability to admit new students until the program complies with board standards.

2. Revoke the approval of the program for a period of two years.

E. An approved medication assistant training program must maintain accurate and current records for at least five years, including the full theoretical and practical curriculum provided to each student.

F. The training program must furnish a copy of a student's certificate of completion to the board within ten days after each student successfully completes a medication assistant training program.

32-1668. Nurse licensure compact

(Conditionally Rpld.)

This state enacts the nurse licensure compact dated November 6, 1998 as follows:

ARTICLE I

Findings and Declaration of Purpose

A. The party states find that:

1. The health and safety of the public are affected by the degree of compliance with and the effectiveness of enforcement activities related to state nurse licensure laws;

2. Violations of nurse licensure and other laws regulating the practice of nursing may result in injury or harm to the public;

3. The expanded mobility of nurses and the use of advanced communication technologies as part of our nation's healthcare delivery system require greater coordination and cooperation among states in the areas of nurse licensure and regulation;

4. New practice modalities and technology make compliance with individual state nurse licensure laws difficult and complex;

5. The current system of duplicative licensure for nurses practicing in multiple states is cumbersome and redundant to both nurses and states.

B. The general purposes of this compact are to:

1. Facilitate the states' responsibility to protect the public's health and safety;

2. Ensure and encourage the cooperation of party states in the areas of nurse licensure and regulation;

3. Facilitate the exchange of information between party states in the areas of nurse regulation, investigation and adverse actions;

4. Promote compliance with the laws governing the practice of nursing in each jurisdiction;

5. Invest all party states with the authority to hold a nurse accountable for meeting all state practice laws in the state in which the patient is located at the time care is rendered through the mutual recognition of party state licenses.

ARTICLE II

Definitions

As used in this compact:

A. "Adverse action" means a home or remote state action.

B. "Alternative program" means a voluntary, non-disciplinary monitoring program approved by a nurse licensing board.

C. "Coordinated licensure information system" means an integrated process for collecting, storing, and sharing information on nurse licensure and enforcement activities related to nurse licensure laws, which is administered by a non-profit organization composed of and controlled by state nurse licensing boards.

D. "Current significant investigative information" means:

1. Investigative information that a licensing board, after a preliminary inquiry that includes notification and an opportunity for the nurse to respond if required by state law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative information that indicates that the nurse represents an immediate threat to public health and safety regardless of whether the nurse has been notified and had an opportunity to respond.

E. "Home state" means the party state which is the nurse's primary state of residence.

F. "Home state action" means any administrative, civil, equitable or criminal action permitted by the home state's laws which are imposed on a nurse by the home state's licensing board or other authority including actions against an individual's license

such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

G. "Licensing board" means a party state's regulatory body responsible for issuing nurse licenses.

H. "Multistate licensure privilege" means current, official authority from a remote state permitting the practice of nursing as either a registered nurse or a licensed practical/vocational nurse in such party state. All party states have the authority, in accordance with existing state due process law, to take actions against the nurse's privilege such as: revocation, suspension, probation or any other action which affects a nurse's authorization to practice.

I. "Nurse" means a registered nurse or licensed practical/vocational nurse, as those terms are defined by each party's state practice laws.

J. "Party state" means any state that has adopted this compact.

K. "Remote state" means a party state, other than the home state:

1. Where the patient is located at the time nursing care is provided, or,

2. In the case of the practice of nursing not involving a patient, in such party state where the recipient of nursing practice is located.

L. "Remote state action" means:

1. Any administrative, civil, equitable or criminal action permitted by a remote state's laws which are imposed on a nurse by the remote state's licensing board or other authority including actions against an individual's multistate licensure privilege to practice in the remote state, and

2. Cease and desist and other injunctive or equitable orders issued by remote states or the licensing boards thereof.

M. "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

N. "State practice laws" means those individual party's state laws and regulations that govern the practice of nursing, define the scope of nursing practice, and create the methods and grounds for imposing discipline. "State practice laws" does not include

the initial qualifications for licensure or requirements necessary to obtain and retain a license, except for qualifications or requirements of the home state.

ARTICLE III

General Provisions and Jurisdiction

A. A license to practice registered nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a registered nurse in such party state. A license to practice licensed practical/vocational nursing issued by a home state to a resident in that state will be recognized by each party state as authorizing a multistate licensure privilege to practice as a licensed practical/vocational nurse in such party state. In order to obtain or retain a license, an applicant must meet the home state's qualifications for licensure and license renewal as well as all other applicable state laws.

B. Party states may, in accordance with state due process laws, limit or revoke the multistate licensure privilege of any nurse to practice in their state and may take any other actions under their applicable state laws necessary to protect the health and safety of their citizens. If a party state takes such action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

C. Every nurse practicing in a party state must comply with the state practice laws of the state in which the patient is located at the time care is rendered. In addition, the practice of nursing is not limited to patient care, but shall include all nursing practice as defined by the state practice laws of a party state. The practice of nursing will subject a nurse to the jurisdiction of the nurse licensing board and the courts, as well as the laws, in that party state.

D. This compact does not affect additional requirements imposed by states for advanced practice registered nursing. However, a multistate licensure privilege to practice registered nursing granted by a party state shall be recognized by other party states as a license to practice registered nursing if one is required by state law as a precondition for qualifying for advanced practice registered nurse authorization.

E. Individuals not residing in a party state shall continue to be able to apply for nurse licensure as provided for under the laws of each party state. However, the license granted to these individuals will not be recognized as granting the privilege to practice nursing in any other party state unless explicitly agreed to by that party state.

ARTICLE IV

Applications for Licensure in a Party State

A. Upon application for a license, the licensing board in a party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held, or is the holder of, a license issued by any other state, whether there are any restrictions on the multistate licensure privilege, and whether any other adverse action by any state has been taken against the license.

B. A nurse in a party state shall hold licensure in only one party state at a time, issued by the home state.

C. A nurse who intends to change primary state of residence may apply for licensure in the new home state in advance of such change. However, new licenses will not be issued by a party state until after a nurse provides evidence of change in primary state of residence satisfactory to the new home state's licensing board.

D. When a nurse changes primary state of residence by:

1. Moving between two party states, and obtains a license from the new home state, the license from the former home state is no longer valid;

2. Moving from a non-party state to a party state, and obtains a license from the new home state, the individual state license issued by the non-party state is not affected and will remain in full force if so provided by the laws of the non-party state;

3. Moving from a party state to a non-party state, the license issued by the prior home state converts to an individual state license, valid only in the former home state, without the multistate licensure privilege to practice in other party states.

ARTICLE V

Adverse Actions

In addition to the general provisions described in article III, the following provisions apply:

A. The licensing board of a remote state shall promptly report to the administrator of the coordinated licensure information system any remote state actions including the factual and legal basis for such action, if known. The licensing board of a remote state shall also promptly report any significant current investigative information yet to

result in a remote state action. The administrator of the coordinated licensure information system shall promptly notify the home state of any such reports.

B. The licensing board of a party state shall have the authority to complete any pending investigations for a nurse who changes primary state of residence during the course of such investigations. It shall also have the authority to take appropriate action(s), and shall promptly report the conclusions of such investigations to the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the new home state of any such actions.

C. A remote state may take adverse action affecting the multistate licensure privilege to practice within that party state. However, only the home state shall have the power to impose adverse action against the license issued by the home state.

D. For purposes of imposing adverse action, the licensing board of the home state shall give the same priority and effect to reported conduct received from a remote state as it would if such conduct had occurred within the home state. In so doing, it shall apply its own state laws to determine appropriate action.

E. The home state may take adverse action based on the factual findings of the remote state, so long as each state follows its own procedures for imposing such adverse action.

F. Nothing in this compact shall override a party state's decision that participation in an alternative program may be used in lieu of licensure action and that such participation shall remain non-public if required by the party state's laws. Party states must require nurses who enter any alternative programs to agree not to practice in any other party state during the term of the alternative program without prior authorization from such other party state.

ARTICLE VI

Additional Authorities Invested in Party

State Nurse Licensing Boards

Notwithstanding any other powers, party state nurse licensing boards shall have the authority to:

A. If otherwise permitted by state law, recover from the affected nurse the costs of investigations and disposition of cases resulting from any adverse action taken against that nurse;

B. Issue subpoenas for both hearings and investigations which require the attendance and testimony of witnesses, and the production of evidence. Subpoenas issued by a nurse licensing board in a party state for the attendance and testimony of witnesses, and/or the production of evidence from another party state, shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located.

C. Issue cease and desist orders to limit or revoke a nurse's authority to practice in their state;

D. Promulgate uniform rules and regulations as provided for in article VIII(c).

ARTICLE VII

Coordinated Licensure Information System

A. All party states shall participate in a cooperative effort to create a coordinated database of all licensed registered nurses and licensed practical/vocational nurses. This system will include information on the licensure and disciplinary history of each nurse, as contributed by party states, to assist in the coordination of nurse licensure and enforcement efforts.

B. Notwithstanding any other provision of law, all party states' licensing boards shall promptly report adverse actions, actions against multistate licensure privileges, any current significant investigative information yet to result in adverse action, denials of applications, and the reasons for such denials, to the coordinated licensure information system.

C. Current significant investigative information shall be transmitted through the coordinated licensure information system only to party state licensing boards.

D. Notwithstanding any other provision of law, all party states' licensing boards contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to other entities or individuals without the express permission of the contributing state.

E. Any personally identifiable information obtained by a party states' licensing board from the coordinated licensure information system may not be shared with non-party states or disclosed to other entities or individuals except to the extent permitted by the laws of the party state contributing the information.

F. Any information contributed to the coordinated licensure information system that is subsequently required to be expunged by the laws of the party state contributing that information, shall also be expunged from the coordinated licensure information system.

G. The compact administrators, acting jointly with each other and in consultation with the administrator of the coordinated licensure information system, shall formulate necessary and proper procedures for the identification, collection and exchange of information under this compact.

ARTICLE VIII

Compact Administration and Interchange of Information

A. The head of the nurse licensing board, or his/her designee, of each party state shall be the administrator of this compact for his/her state.

B. The compact administrator of each party state shall furnish to the compact administrator of each other party state any information and documents including, but not limited to, a uniform data set of investigations, identifying information, licensure data, and disclosable alternative program participation information to facilitate the administration of this compact.

C. Compact administrators shall have the authority to develop uniform rules to facilitate and coordinate implementation of this compact. These uniform rules shall be adopted by party states, under the authority invested under article VI (d).

ARTICLE IX

Immunity

No party state or the officers or employees or agents of a party state's nurse licensing board who acts in accordance with the provisions of this compact shall be liable on account of any act or omission in good faith while engaged in the performance of their duties under this compact. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

ARTICLE X

Entry into Force, Withdrawal and Amendment

A. This compact shall enter into force and become effective as to any state when it has been enacted into the laws of that state. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until six months after the withdrawing state has given notice of the withdrawal to the executive heads of all other party states.

B. No withdrawal shall affect the validity or applicability by the licensing boards of states remaining party to the compact of any report of adverse action occurring prior to the withdrawal.

C. Nothing contained in this compact shall be construed to invalidate or prevent any nurse licensure agreement or other cooperative arrangement between a party state and a non-party state that is made in accordance with the other provisions of this compact.

D. This compact may be amended by the party states. No amendment to this compact shall become effective and binding upon the party states unless and until it is enacted into the laws of all party states.

ARTICLE XI

Construction and Severability

A. This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the party state affected as to all severable matters.

B. In the event party states find a need for settling disputes arising under this compact:

1. The party states may submit the issues in dispute to an arbitration panel which will be comprised of an individual appointed by the compact administrator in the home state; an individual appointed by the compact administrator in the remote state(s)

involved; and an individual mutually agreed upon by the compact administrators of all the party states involved in the dispute.

2. The decision of a majority of the arbitrators shall be final and binding.

41-1002.01. Educational programs; enrollment limit prohibited; definition

A. An agency may not limit enrollment in any school or educational program of an institution of higher education.

B. For the purposes of this section, "agency" has the same meaning prescribed in section 41-1001 but does not include the Arizona board of regents or any community college district board.

DEPARTMENT OF REVENUE (R-17-0503)
Title 15, Chapter 10, Article 3, Authorized Transmission of Funds

Amend: R15-10-301; R15-10-302; R15-10-303; R15-10-304; R15-10-305; R15-10-306

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: D-4**

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

FROM: Marcus McGillivray, Staff Intern

DATE: April 18, 2017

SUBJECT: **DEPARTMENT OF REVENUE (R-17-0503)**
Title 15, Chapter 10, Article 3, Authorized Transmission of Funds

Amend: R15-10-301; R15-10-302; R15-10-303; R15-10-304; R15-10-305; R15-10-306

The Department of Revenue (Department) is engaging in a rulemaking relating to six rules in 15 A.A.C. Chapter 10, Article 3 entailing procedures by which taxpayers may remit electronic payments to the Department for various types of taxes. These rules define the terms used in the article, require taxpayers whose tax obligations meets a threshold amount to remit payments electronically, allow taxpayers who do not meet the threshold amount to make electronic payments, and expand the methods permitted for electronic payments. Most of these rules were last amended in 1998. The Department requests an effective date of July 1, 2017 to coincide with the beginning of the new fiscal year.

Proposed Action

The following is a non-exhaustive summary of the changes in the Department's rules:

- R15-10-301: Definitions
  - Includes the web address AZTaxes.gov where taxpayers are to remit electronic payments;
  - Directs luxury tax payers to go to the Arizona Luxury Tax Online (ALTO) website to make electronic payments;
  - Eliminates the Department's affiliation with third party Data Collection Center, which would collect and process electronic payments for the department;
  - Clarifies the definition of an Electronic Funds Transfer;
  - Eliminates the definition of payor information number since it only pertained to the Data Collection Center.

- R15-10-302: General Requirements
  - Requires taxpayers with tax obligations in excess of $20,000 to pay electronically: previously the requirement to pay electronically extended to payors with obligations exceeding $100,000 or $50,000 depending on the type of tax;
  - Requires tobacco taxpayers to remit payment electronically;
  - Requires taxpayers who have any tax obligation under A.R.S. Title 42, Chapter 5 and 6, Articles 1 and 3 for tax periods starting on or after July 1, 2017 exceeding $20,000 to remit electronic payments.

- R15-10-303: Voluntary Participation
  - Allows liquor taxpayers and other taxpayers who owe less than $20,000 in tax obligations to make payment electronically;
  - Removes subsections which allow corporate income tax payors with less than a quarterly obligation of $100,000 and taxpayers with less than $50,000 in average quarterly obligations to remit electronic payments.

- R15-10-304: Authorization Agreement
  - Requires a payor to register for an account on Aztaxes.gov, ALTO, or ACH (electronic transfer method) Credit Form in order to remit payments electronically;
  - Consolidates the list of information needed for registration forms into one subsection;
  - Consolidates the required banking information into one subsection.

- R15-10-305: Methods of Electronic Funds Transfer
  - Informs the payor to find the ACH debit transfer method on Aztaxes.gov or the ALTO website;
  - Alludes to the forms listed in subsection 304 for payors wanting to use the ACH credit method;
  - Eliminates the requirement that the inability of a payor to use their established method of payment must result from reasons beyond their control in order to request to remit payment via wire transfer.

- R15-10-306: Procedures for Payment
  - Directs payors using electronic payment methods to the AZTaxes.gov or ALTO site, and eliminates the requirements to report payment information to the Data Collection Center;
  - Eliminates subsections listing required information to be sent to the Data collection Center;
  - States that ACH credit transfers shall be in the CCD-plus addenda format or they may be rejected;
  - Eliminates outdated information submission procedures, and directs payors to submit information through AZTaxes.com or the ALTO website.

Exemption or Request and Approval for Exception from the Moratorium

The Department received an exception to the moratorium on December 20, 2016.

Substantive or Procedural Concerns

None.

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 within the Department's statutory authority.

- A.R.S. § 42-1005(A)(1): The Director shall make administrative rules which he deems necessary and proper to administer the Department.
- A.R.S. § 42-1129: The Department shall make a rule requiring that any taxpayer who owed $20,000 or more in the preceding taxable year to remit payments electronically.
- A.R.S. § 42-3053(B): Requires tax obligations on tobacco products other than cigarettes to be remitted electronically.
- A.R.S. § 42-5015: Requires the Department to administer the electronic payment system through which taxpayers are able to remit payments.

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

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

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

The Department did not receive any comments regarding this rulemaking.

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

No. The final rules, considered as a whole, do not contain substantial changes from the proposed rules.

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

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

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 there is no corresponding 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?

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

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

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

9. Conclusion

The Department requests that the rules become effective on July 1, 2017 to coincide with the new fiscal year. Staff recommends the approval of the rules.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: D-4**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF REVENUE (R-17-0503)**
Title 15, Chapter 10, Article 3, Authorized Transmission of Funds

Amend: R15-10-301; R15-10-302; R15-10-303; R15-10-304; R15-10-305; R15-10-306

I reviewed the economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 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

A.A.C. Title 15, Chapter 10, Article 3 promulgates rules that provide details of the procedure by which taxpayers may make electronic payment to the Department of Revenue (Department) for various types of tax. Generally, those rules require that taxpayers owing certain types of taxes over a specific threshold amount make payments by electronic means. A.R.S. § 42-1129(A) sets out the threshold amount (currently an annual tax liability of $20,000) over which the Department may make rules to require electronic payment of taxes.

Some of the rules are outdated and only require certain tax types to pay electronically. In addition, as of January 2017 the Department becomes the single point of processing of tax returns including tax payments for municipalities and had to implement a new system through which returns were filed and payments made.

In this rulemaking, the Department is proposing to amend six sections of Article 3 to eliminate outdated rules related to the payment of taxes by electronic means and to supplement existing rules to make it easier for taxpayers to pay their taxes to the Department through its online system. The expansion of tax types that can volunteer in the electronic payment system will reduce the amount of time taken to process refunds and reduce the risk of payments getting lost or misplaced as a result of the use of the mail system or when processing cash payments internally.

The Department currently receives payment of tax by means of electronic funds transfer from approximately 39,304 mandatory taxpayers and in fiscal year 2017 the Department received over $10.1 billion via electric fund transfer (EFT). There are currently 1,043 active liquor licenses and 645 active bingo licenses. Currently, bingo licensees are not required to remit their tax payments online, but those taxpayers will be given the option to pay their tax liability by EFT. Additionally, there are 255 tobacco licensees that pay their tax liability by EFT. 82% of all tobacco payments (including stamp purchases, other tobacco products (OTP) tax payments, license fees, etc.) made in FY 16 were submitted through EFT.

1. **Costs and Benefits for:**

a. The implementing agency:

The Department incurred the cost of completing this rulemaking, and will incur the minimal cost of implementing it. The Department already has online portals through which taxpayers can pay their taxes. Enabling more users of this system will benefit the agency by reducing the time it takes to receive payment.

b. Political subdivisions:

The Department expects the political subdivisions to experience improved cash flow due to these amendments, and will be able to remit payments to Arizona jurisdictions quickly and more efficiently.

c. Businesses:

The Department expects only minimal impact to businesses affected by the rule as it will require certain taxpayers to make tax payments by electronic means, and all taxpayers (other than individual income taxpayers) will have the option to do so.

d. Small businesses:

For small businesses, the same category of persons—that is, current and prospective taxpayers—as for mid- to large-sized businesses is potentially subject to this rulemaking, as they have the option to pay their tax liability online unless they are otherwise required to do so.

e. Consumers directly affected by the rulemaking:

The Department does not anticipate that private persons other than current and prospective taxpayers would be directly affected by this rulemaking.

2. Do the probable benefits outweigh the probable costs?

Based on the information provided, the Department indicates that the benefit from the proposed amendments outweigh the costs. The proposed rules will have minimal economic

impact because it merely clarifies the handling cash management and efficient payment processes used within the Department's tax payment system.

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

An analysis was not submitted because the Department estimated that there will be no economic impact to small businesses.

4. The probable effect on state revenues:

The proposed rulemaking will have no effect on state revenues.

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

The Department believes this is the least costly and least intrusive method because it will clarify the tax payment processes without imposing additional requirements on the public.

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

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

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

The Department indicates that no outside data or studies were used in the development of the proposed rule amendment.

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.

STATE OF ARIZONA
Department of Revenue

March 21, 2017

Ms. Nicole A. Ong
Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Room 402
Phoenix, Arizona 85007

Douglas A. Ducey
Governor

David Briant
Director

Re: Notice of Final Rulemaking – Amendement to rules in 15 A.A.C.10.

Dear Ms. Ong:

The Department submits the enclosed Notice of Final Rulemaking amending the following rules for the Council's consideration and approval:

R15-10-301 Definitions
R15-10-302 General Requirements
R15-10-303 Voluntary Participation
R15-10-304 Authorization Agreement
R15-10-305 Methods of Electronic Funds Transfer
R15-10-306 Procedures for Payment

The Department filed a Notice of Rulemaking Docket Opening and Notice of Proposed Rulemanking with the Arizona Secretary of State on December 22, 2016. The close of record date was February 22, 2017. This rulemaking activity does not relate to a fiveyear review report and the rules do not establish any new fees or fee increases.

The Department did not receive any study relevant to the rules. Accordingly certifies that the preamble discloses no reference to any such study and it did not rely on any such study in its evaluation of or justification for the rules. The Department does *not* believe that it will be necessary to engage any additional full-time employees to implement and enforce the rules.

The Department is requesting an effective date of July 1, 2017 to coincide with the beginning of its fiscal year.

The following documents are enclosed:

- The Notice of Final Rulemaking, including the preamble, table of contents for the rulemaking and the text of each rule;
- Economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
- Reference materials: authorizing and implementing statutes; the A.A.C. rules.

- E-mail approving the Department's request for an exception to the rulemaking moratorium.

If you have any questions, please contact Lisa Querard, Attorney III, Taxpayer Services Section at 602-716-6813 or via email at LQuerard@azdor.gov. Thank you for your consideration.

Sincerely,

Grant Nülle
Deputy Director
Arizona Department of Revenue

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE – GENERAL ADMINISTRATION SECTION

PREAMBLE

1. Article, Part, or Section Affected (as applicable)		**Rulemaking Action**
R15-10-301.	Definitions	Amend
R15-10-302.	General Requirements	Amend
R15-10-303.	Voluntary Participation	Amend
R15-10-304.	Authorization Agreement	Amend
R15-10-305.	Methods of Electronic Funds Transfer	Amend
R15-10-306.	Procedures for Payment	Amend

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

Authorizing statute: A.R.S. § 42-1005(A)(1).

Implementing statute: A.R.S. § 42-1129(A), A.R.S. §42-3053(B), A.R.S. §42-5015.

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):

The Department is requesting an effective date of July 1, 2017 to coincide with the beginning of its fiscal year.

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 earlier date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable.

4. Citations to all related notices published in the Register 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: (volume #23, issue #2) A.A.R. (page #138)

Notice of Proposed Rulemaking: (volume #23, issue #2) A.A.R. (page #108)

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

Name:	Christie Comanita
Address:	1600 W. Monroe St. Div. Code 3, Phoenix, AZ 85007
Telephone:	(602) 716-6791
Fax:	(602) 716-7995
E-mail:	ccomanita@azdor.gov
Web site:	http://www.azdor.gov

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

The Department's justifications and reasons for making or amending the rules addressed by this Notice are as follows:

Title 15 Chapter 10 Article 3 of the Arizona Administrative Code ("A.A.C.") promulgates rules that provide details of the procedure by which taxpayers may make electronic payment to the Department for various tax types. Generally, those rules require that taxpayers owing certain types of taxes over a specific threshold amount make payments by electronic means. A.R.S. §

42-1129(A) sets out the threshold amount (currently an annual tax liability of $20,000) over which the Department may make rules to require electronic payment of taxes. Some of the rules are outdated and only require certain tax types to pay electronically. In addition, as of January 2017 the Department becomes the single point of processing of tax returns including tax payments for municipalities and had to implement a new system through which returns were filed and payments made. As a result, the Department is updating the rules to eliminate outdated rules related to the payment of taxes by electronic means and to supplement existing rules to make it easier for taxpayers to pay their taxes to the Department of revenue through its online system. Additionally, the rules will expand the tax types required to remit payment electronically and allow certain other tax types that fall below the threshold amount to use the electronic payment system. The changes amend and remove rule language that is ambiguous, outmoded, or otherwise imprecise in explaining the Department's current position to affected taxpayers. Notably, the amending language:

- Removes language that referred to the old system whereby the Department contracted with third party data collection centers to process electronic payments on its behalf as that system is no longer used;
- Includes language to refer to the Department's new electronic payment system through the use of the Department's web site, AZTaxes.gov and the luxury tax web site ALTO;
- Removes language that is no longer applicable as a result of lapse of time;
- Broadens the tax types and threshold amounts subject to payment by electronic means;
- Broadens the tax types that can voluntarily participate in electronic payments and provide the procedures to be followed.

The benefits of this rulemaking include the following:

- Reducing the time taken to process remittances from taxpayers to the Department;
- Reducing the time taken to process refunds by the Department to taxpayers;
- Reducing the risk associated with payments getting lost or misplaced as a result of the use of the mail system or when processing payments internally;

- Enabling the Department to better handle its cash flow and inter-governmental payments.

R15-10-301. R15-10-301 defines terms used in the rule. There are some definitions that should be included because of use of the new system being used to process electronic payments. As a result the Department is amending R15-10-301 to exclude the definition and concepts related to the data collection center which is no longer used to process electronic payments and to add the definition of AZTaxes.gov and ALTO which are the new Department portals through which electronic tax payments may be initiated and processed.

R15-10-302. A.R.S. §42-1129 permits the Department to issue rules to mandate that any taxpayer that owed $20,000 or more for the preceding taxable year in connection with any tax administered by the Department (except individual income tax) to pay the tax liability on or before the payment date prescribed by law electronically. R15-10-302 expands the tax types that the Department previously required to remit payment electronically to include transaction privilege tax and tobacco tax. R15-10-302 now requires taxpayers with transaction privilege tax annual liability of over $20,000 to remit tax payments electronically. In addition, it requires taxpayers with withholding tax liability of over $20,000 annually (previously $80,000 annually or $20,000 quarterly) to remit tax payments electronically.

R15-10-303. R15-10-303 allows taxpayers that do not meet the $20,000 tax liability threshold amount and taxpayers with liquor tax liability of any amount to participate in the electronic payment process.

R15-10-304. R15-10-304 alters the type of information included in the ACH debit authorization agreement to reflect the current requirements.

R15-10-305. R15-10-305 expands the methods permitted for electronic payments to include the Department's new payment portals on AZTaxes.gov and ALTO. It also allows payors to remit

payment via wire transfer as is done now on a regular basis and remove the requirement for payors to state a reason why payment cannot be remitted through ACH debit or credit.

R15-10-306. R15-10-306 amends the procedure for initiating electronic payment of taxes to include the Department's AZTaxes.gov and ALTO portals and to remove references to the old data collection center procedures.

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

Not applicable.

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

Not applicable.

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

Data used in preparation of the economic, small business, and consumer impact statement includes figures based on current EFT filers and the projected increase in the number of filers due to the lowering of the liability threshold and the addition of other tax types. Benefits will accrue to the state general fund. Compliance by entities not already required to remit by means of electronic funds transfer will necessitate a change in payment methods and may involve changes in processing and accounting systems. It is expected that the benefits of the rule will be greater than the costs.

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

None.

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

None received.

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 A.R.S. §41-1055 shall respond to the following questions:

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Not applicable.

15. The full text of the rules follows:

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

Section

R15-10-301. Definitions

R15-10-302. General Requirements

R15-10-303. Voluntary Participation

R15-10-304. Authorization Agreement

R15-10-305. Methods of Electronic Funds Transfer

R15-10-306. Procedures for Payment

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

R15-10-301. Definitions

The following definitions apply for purposes of this Article:

1. "ACH" means an automated clearing house that is a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.
2. "ACH credit" means an electronic funds transfer generated by a payor, cleared through an ACH for deposit to the Department account.
3. "ACH debit" means an electronic transfer of funds from a payor's account, as indicated on a signed authorization agreement, that is generated at a payor's instruction on AZ-Taxes.gov and cleared through an ACH for deposit to the Department account.
4. "Addenda record" means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R15-10-306(B).
5. "ALTO" is the Arizona Luxury Tax Online web site, luxury.aztaxes.gov or such other web site as the Department may determine from time to time, and means the Department's luxury taxpayer service center web site that provides luxury taxpayers with the ability to

conduct transactions, make electronic funds transfer payments and review tax account information over the internet.

~~5.~~6. "Authorized means of transmission" means the deposit of funds into the Department account by electronic funds transfer.

7. "AZTaxes.gov" means the Department's taxpayer service center web site, or such other web site as the Department may determine from time to time, that provides taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.

~~6.~~8. "Cash Concentration or Disbursement plus" or "CCD plus" means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.

~~7. "Data Collection Center" means a third party who, under contract with the Department, collects and processes electronic funds transfer payment information from payors.~~

~~8.~~9. "Department" means the Arizona Department of Revenue.

~~9.~~10. "EFT Program" means the payment of taxes by electronic funds transfer as specified by this Article.

~~10.~~11. "Electronic Funds Transfer" or "EFT" ~~means any transfer of funds initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape~~ means the electronic transfer of funds from one bank account to another via computer based systems, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in these rules.

~~11.~~12. "Financial institution" means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.

~~12.~~13. "Payment information" means the data that the Department requires of a payor making an electronic funds transfer payment.

~~13.~~14. "Payor" means a taxpayer or payroll service.

~~14. "Payor information number" means a confidential code assigned to identify the payor and allow the payor to communicate payment information to the Data Collection Center.~~

15. "Payroll service" means a third party, under contract with a taxpayer to provide tax payment services on behalf of the taxpayer.
16. "State Servicing Bank" means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.
17. "Tax type" means a tax that is subject to electronic funds transfer, each of which shall be considered a separate category of payment.
18. "Wire transfer" or "Fedwire" means an instantaneous electronic funds transfer initiated by a payor.

R15-10-302. General Requirements

~~**A.** For tax periods beginning on or after January 1, 1993, the following taxpayers shall remit the following tax payments:~~

~~1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $100,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;~~

~~2. Corporations which had an Arizona income tax liability during the prior tax year of $100,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.~~

~~**B.** For tax periods beginning on or after January 1, 1994, the following taxpayers shall remit the following tax payments:~~

~~1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $50,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;~~

~~2. Corporations which had an Arizona income tax liability during the prior tax year of $50,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.~~

~~**C.**~~**A.** For tax periods beginning on or after January 1, 1997, ~~the following taxpayers shall remit the following tax payments:~~

~~1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $20,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;~~

~~2.~~ Corporations which had an Arizona income tax liability during the prior tax year of $20,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.

B. For tax periods beginning on or after July 1, 2017, taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $5,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission.

~~**D.**~~**C.** The average Arizona quarterly withholding tax liability is determined by dividing the taxpayer's total Arizona withholding tax liability for the calendar year by 4.

~~**E.** For tax periods beginning on or after July 1, 1997, taxpayers who, under A.R.S. Title 42, Chapters 8, 8.1, 8.2, 8.3, 9.1, and 9.2 had an annual tax liability during the prior calendar year of $1 million or more shall remit these tax payments by an authorized means of transmission.~~

D. For tax periods beginning on and after July 1, 2017, any taxpayer who under A.R.S. Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability during the prior calendar year of $20,000 or more shall remit these tax payments by an authorized means of transmission.

E. For tax periods after July 1, 2015, tobacco tax taxpayers are required to remit tobacco tax payments by an authorized means of transmission.

R15-10-303. Voluntary Participation

~~**A.** For tax periods beginning on or after January 1, 1993, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of less than $100,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.~~

~~**B.** For tax periods beginning on or after January 1, 1994, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of~~

~~less than $50,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.~~

~~C.~~**A.** For tax periods beginning on or after January 1, 1997, a taxpayer who, during the prior tax year, had a corporate income tax liability ~~or an average quarterly withholding tax liability~~ of less than $20,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with by R15-10-304.

~~**D.** For tax periods beginning on or after July 1, 1997, a taxpayer who, under A.R.S. Title 42, Chapters 8, 8.1, 8.2, 8.3, 9.1, and 9.2 had an annual tax liability during the prior calendar year, of less than $1 million dollars may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.~~

B. For tax periods beginning on or after July 1, 2017, a taxpayer who, during the prior tax year, had an average quarterly withholding tax liability of less than $5,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with by R15-10-304.

~~**E.**~~**C.** For tax periods beginning on and after ~~January 1, 1999,~~ July 1, 2017, any taxpayer who has a ~~luxury~~ liquor tax liability may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

D. For tax periods beginning on and after July 1, 2017, any taxpayer who under Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability of less than $20,000 during the prior calendar year may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

~~**F.**~~**E.** A taxpayer authorized to participate in the EFT Program shall provide at least 30 days prior written notice to the Department if the taxpayer elects to cease voluntary participation in the EFT Program.

R15-10-304. Authorization Agreement

A. The payor shall register for an account and complete an electronic funds transfer authorization agreement on AZTaxes.gov, ALTO or ACH Credit Form prescribed by the Department, as applicable, or such other ~~in the~~ form prescribed by the Department at least 30 days prior to initiation of the first applicable transaction. The form shall include the following information:

1. Name and address of the taxpayer;
2. The taxpayer's tax identification number including a federal identification number, withholding tax identification number, transaction privilege tax identification number or other tax identification number, as appropriate;

~~2. Federal identification number of the taxpayer;~~

~~3. Withholding number of the taxpayer, if applicable;~~

~~4. Transaction privilege tax license number of taxpayer, if applicable;~~

~~5. Type of action being taken;~~

~~6. Tax type;~~

~~7. Method of payment;~~

~~8.~~3. Name and phone number of taxpayer's EFT contact person;

~~9.~~4. Name and address of any payroll service, if applicable;

~~10.~~5. Name and phone number of the payroll service's EFT contact person~~;~~, if applicable;

~~11. Financial institution name and address;~~

~~12. Type of bank account;~~

~~13. Name on bank account;~~

~~14. Bank account number; and,~~

~~15. Bank routing transit number.~~

6. For payments initiated on AZTaxes.gov or ALTO, the information must include the type of bank account, the bank account number and the bank routing transit number.

B. A payor shall submit a revised authorization agreement to the Department at least 30 days prior to any change in the information required in subsection (A).

R15-10-305. Methods of Electronic Funds Transfer

A. Payors shall use the ACH debit transfer method available through registration on AZTaxes.gov or ALTO to remit payment by electronic funds transfer unless the Department grants permission to use the ACH credit method.

B. The Department may authorize under a form prescribed by the Department in R15-10-304 the use of the ACH credit method for payors desiring to use this method. A payor that chooses to use the ACH credit method shall provide the payment information required in R15-10-306(B)(2).

C. The Department may withdraw permission to use the ACH credit method of payment if the payor shows disregard for the requirements and specifications of these rules by failing to:

1. Make timely electronic funds transfer payments,
2. Provide timely payment information,
3. Provide the required addenda record with the electronic funds transfer payment, or
4. Make correct payment.

D. Payors who~~, for reasons beyond their control,~~ are unable to use their established method of payment may request that the Department accept deposits to the Department account via wire transfer in accordance with the following:

1. The payor shall contact the Department, ~~state the reason which prevents timely compliance under either the ACH debit method or ACH credit method,~~ and obtain verbal approval to wire transfer the tax payment to the Department account prior to initiating the transmission.
2. Approved wire transfers shall be accompanied by an addenda record, that includes the same information required for ACH credit transfers under R15-10-306(B)(2).

R15-10-306. Procedures for Payment

A. Payors using the ACH Debit Method shall ~~report payment information to the Data Collection Center~~ log in to their account on AZTaxes.gov or ALTO as appropriate and, unless registering for the first time, shall arrange for electronic payment of the applicable taxes no later than

the time prescribed by the ~~State Servicing Bank~~ AZTaxes.gov or ALTO on the last business day before the due date of the payment.

1. Payment information shall be communicated ~~by one of the following means:~~ automatically to the Department through AZTaxes.gov or ALTO, as applicable, once payment arrangements have been made by payors and accepted by AZTaxes.gov or ALTO.
   ~~a. Operator-assisted communication of payment information made orally by rotary or touch-tone telephone,~~
   ~~b. Touch-tone communication of payment information made by entering data via key pad of a touch-tone telephone, or~~
   ~~c. Computer terminal linked with the Data Collection Center.~~
2. ~~Payors shall communicate the following payment information to the Data Collection Center:~~
   ~~a. Payor information number,~~
   ~~b. Taxpayer identification number,~~
   ~~c. Tax type,~~
   ~~d. Payment amount,~~
   ~~e. Tax period,~~
   ~~f. Payment due date, and~~
   ~~g. Payment sequence number.~~

B. Payors authorized to use the ACH credit method shall initiate payment transactions directly with a financial institution in a timely manner to ensure that the payment is deposited to the Department account on or before the payment due date.

1. All ACH credit transfers shall be in the CCD-plus addenda format. Payments not in this format may be rejected.
2. The addenda format, as specified in subsection (B)(1), shall include the following information:
   a. Taxpayer identification number,
   b. Tax type,
   c. Payment amount,

d. Tax period,

~~e. Payment sequence number,~~

~~f.~~e. Taxpayer verification number,

~~g.~~f. Department account number, and

~~h.~~g. American Bank Association 9-digit number of the receiving bank.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT ("EIS")

NOTICE OF FINAL RULEMAKING

1. An identification of the final rulemaking:

Sections Affected		Rulemaking Action
R15-10-301.	Definitions	Amend
R15-10-302.	General Requirements	Amend
R15-10-303.	Voluntary Participation	Amend
R15-10-304.	Authorization Agreement	Amend
R15-10-305.	Methods of Electronic Funds Transfer	Amend
R15-10-306.	Procedures for Payment	Amend

2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the final rulemaking:

The Department anticipates that the parties who will be directly affected by, bear the costs of, or directly benefit from this rulemaking are as follows:

- The Department;
- Political subdivisions; and
- Current and prospective taxpayers other than individual income taxpayers

3. A cost benefit analysis:

The Department's responses in this analysis are limited by the data available to it through its various divisions and sections. Any probable cost ranges referenced in this section are as follows:

- Minimal costs = less than $1,000
- Moderate costs = $1,000 to $10,000

§ Substantial costs = more than $10,000

Where such ranges are not referenced, the Department characterizes the probable or anticipated impacts below in qualitative terms, pursuant to A.R.S. § 41-1055(C).

a. The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the final rulemaking:

The Department has become the single point of collection and administration for all jurisdictions for taxes imposed by any city or town in Arizona as well as taxes imposed by the State of Arizona. As such, the Department was charged with the responsibility of creating a new electronic system which includes the ability of a taxpayer or its representative to pay their taxes online. Additionally, A.R.S. § 42-1129 permits the Department to require by rule the payment of any tax, except individual income tax, by electronic funds transfer ("EFT") if the taxpayer had a liability of $20,000 or more for the preceding taxable year. The Department, has by previous administrative rule, required corporate, withholding and transaction privilege taxpayers to pay their tax liability online and gave other taxpayers the option to similarly pay their tax liability online. The Department is also authorized to prescribe, by rule, new taxpayers or threshold amounts.

The Department has completed the system to enable taxpayers to pay their taxes online through its online portals, AZTaxes.gov and Arizona Luxury Tax Online ("ALTO"). To increase efficiency of tax administration, the Department is seeking to amend the rules to increase the number of taxpayers currently required or

permitted to pay their tax liability through electronic means. Through the rule amendment the Department will require all transaction privilege tax ("TPT") taxpayers with a liability of $20,000 or more in the preceding taxable year to pay their tax liability through EFT. The Department is also amending the rule to decrease the threshold for making withholding tax payments from a quarterly liability of $20,000 in the previous tax year to a quarterly liability of $5,000 in the previous year. The Department will also give the option to all taxpayers (other than individual income taxpayers) who do not meet the thresholds to pay their taxes by electronic means.

The Department currently receives payment of tax by means of electronic funds transfer from approximately 39,304 mandatory taxpayers and in fiscal year 2017 the Department received over $10.1 billion via EFT. There are currently 1,043 active liquor licenses and 645 active bingo licenses. Currently bingo licensees are not required to remit their tax payments online, but those taxpayers will be given the option to pay their tax liability by EFT. Additionally, there are 255 tobacco licensees that pay their tax liability by EFT. 82% of all tobacco payments (including stamp purchases, OTP tax payments, license fees, etc.) made in FY16 were submitted through EFT.

Although not currently quantifiable, the Department expects to experience time savings and more efficiency in processing payments and issuing refunds since payments will be made in immediately available funds to the Department on the tax due dates. There will likely be less late tax payment and so fewer penalties

assessed. Increased EFT payments will provide the state with an increase in cash flow as a result of additional days' interest on payments received. This, in turn, has a positive impact on the general fund.

The Department does not anticipate that it will be necessary to hire any new full-time employees to implement and enforce the amendments to the rules.

There are no other agencies directly impacted by the implementation and enforcement of this rulemaking.

b. The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the final rulemaking:

The Department anticipates that the implementation and enforcement of this rulemaking will directly affect the state's political subdivisions positively. Those political subdivisions include any Arizona city or town imposing a transaction privilege or affiliated excise tax which are administered by the Department.

Although not currently quantifiable, as a result of on-time receipt of tax payments, the Department expects the political subdivisions to experience improved cash flow as a result and will be able to remit payments to Arizona jurisdictions quickly and more efficiently. The Department does not anticipate political subdivisions will incur any negative effects as a result of the final rulemaking.

c. The probable costs and benefits to businesses directly affected by the final rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the final rulemaking:

Current and prospective taxpayers may be affected by this rulemaking. The amended rules will require certain taxpayers to make tax payment by electronic means and all taxpayers (other than individual income taxpayers) will have the option to do so. The time taken to remit tax payments will be significantly reduced and the risk of a payment getting lost through the mail system or in internal processing will also be significantly reduced. Overall, it will result in less potential late payment penalties being assessed against taxpayers, faster payment processing times and refunds being issued more quickly. The Department expects only *minimal* impact to businesses affected by the rule in terms of staffing levels, cash flow and barriers to industry entry.

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

Except as outlined above, the Department does not anticipate any impact on private and public employment (whether direct or indirect) in businesses, agencies, and political subdivisions of this state directly affected by this rulemaking.

5. A statement of the probable impact of the final rulemaking on small businesses:

A.R.S. § 41-1001 defines a small business as a concern, including its affiliates, that is independently owned and operated, not dominant in its field, and employs fewer than 100 full-time employees or that had gross annual receipts of less than $4,000,000 in its last fiscal year.

a. An identification of the small businesses subject to the final rulemaking:

For small businesses, the same category of persons—that is, current and prospective taxpayers—as for mid- to large-sized businesses is potentially subject to this rulemaking as they have the *option* to pay their tax liability online unless they are otherwise required to do so.

b. The administrative and other costs required for compliance with the final rulemaking:

Currently, there are approximately 222,000 TPT taxpayers and 22,784 TPT taxpayers that had a tax liability of more than $20,000 in the prior tax year (2016). However, as noted earlier there are 39,304 taxpayers that pay their tax liability via EFT. Thus, it is likely that many taxpayers who will meet the threshold requirements of the amended rule requiring them to pay electronically are already doing so.

As this rulemaking does not introduce any novel requirements for compliance beyond those already required by statute, the Department does not anticipate additional administrative or other costs required for compliance, other than costs associated with reviewing the rules themselves. The Department cannot, however, currently quantify such costs. Some small businesses may be impacted by the administrative reduction of the threshold requirements to remit taxes electronically. That notwithstanding, any impact will be minimal since paying electronically will simplify the payment process and limit the business's exposure for penalties and interest where payments are not received on time. Additionally, because the amendments to the rules will not cause any *additional* reporting or

compliance requirements for small businesses and it is likely that some businesses already pay via EFT even though not required to, businesses will not have to employ any additional personnel or engage any additional outside services such as legal or consulting fees as a result of the rule changes.

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

Small businesses will not be impacted negatively by the rules so they cannot be further simplified, reduced, or exempted pursuant to A.R.S. § 41-1035.

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

The Department does not anticipate that private persons other than current and prospective taxpayers would be directly affected by this rulemaking.

6. A statement of the probable effect on state revenues:

As the matters covered by the rules reflect current statutory requirement, the Department does not anticipate any effect on state revenues from this rulemaking; better cash management as a result of a more efficient payment process may produce a positive effect, but the Department cannot currently quantify this effect.

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

The methods by which the Department achieves its purposes in this rulemaking are statutorily set; consequently, the Department is not authorized to develop, through rulemaking, alternative methods as suggested, and has not attempted to do so.

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

Not applicable.

TITLE 15. REVENUE

CHAPTER 10. DEPARTMENT OF REVENUE - GENERAL ADMINISTRATION

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

Section

R15-10-301. Definitions

R15-10-302. General Requirements

R15-10-303. Voluntary Participation

R15-10-304. Authorization Agreement

R15-10-305. Methods of Electronic Funds Transfer

R15-10-306. Procedures for Payment

ARTICLE 3. AUTHORIZED TRANSMISSION OF FUNDS

R15-10-301. Definitions

The following definitions apply for purposes of this Article:

1. "ACH" means an automated clearing house that is a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions.
2. "ACH credit" means an electronic funds transfer generated by a payor, cleared through an ACH for deposit to the Department account.
3. "ACH debit" means an electronic transfer of funds from a payor's account, as indicated on a signed authorization agreement, that is generated at a payor's instruction on AZTaxes.gov and cleared through an ACH for deposit to the Department account.
4. "Addenda record" means the information required by the Department in an ACH credit transfer or wire transfer, in the approved electronic format prescribed in R15-10-306(B).
5. "ALTO" is the Arizona Luxury Tax Online web site, luxury.aztaxes.gov or such other web site as the Department may determine from time to time, and means the Department's luxury taxpayer service center web site that provides luxury taxpayers with the ability to

conduct transactions, make electronic funds transfer payments and review tax account information over the internet.

~~5.~~6. "Authorized means of transmission" means the deposit of funds into the Department account by electronic funds transfer.

7. "AZTaxes.gov" means the Department's taxpayer service center web site, or such other web site as the Department may determine from time to time, that provides taxpayers with the ability to conduct transactions, make electronic funds transfer payments and review tax account information over the internet.

~~6.~~8. "Cash Concentration or Disbursement plus" or "CCD plus" means the standardized data format approved by the National Automated Clearing House Association for remitting tax payments electronically.

~~7. "Data Collection Center" means a third party who, under contract with the Department, collects and processes electronic funds transfer payment information from payors.~~

~~8.~~9. "Department" means the Arizona Department of Revenue.

~~9.~~10. "EFT Program" means the payment of taxes by electronic funds transfer as specified by this Article.

~~10.~~11. "Electronic Funds Transfer" or "EFT" ~~means any transfer of funds initiated through an electronic terminal, telephonic instrument, computer, or magnetic tape~~ means the electronic transfer of funds from one bank account to another via computer based systems, where the person initiating the transfer orders, instructs, or authorizes a financial institution to debit or credit an account using the methods specified in these rules.

~~11.~~12. "Financial institution" means a state or national bank, a trust company, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union.

~~12.~~13. "Payment information" means the data that the Department requires of a payor making an electronic funds transfer payment.

~~13.~~14. "Payor" means a taxpayer or payroll service.

14. ~~"Payor information number" means a confidential code assigned to identify the payor and allow the payor to communicate payment information to the Data Collection Center.~~
15. "Payroll service" means a third party, under contract with a taxpayer to provide tax payment services on behalf of the taxpayer.
16. "State Servicing Bank" means a bank designated under A.R.S. Title 35, Chapter 2, Article 2.
17. "Tax type" means a tax that is subject to electronic funds transfer, each of which shall be considered a separate category of payment.
18. "Wire transfer" or "Fedwire" means an instantaneous electronic funds transfer initiated by a payor.

R15-10-302. General Requirements

~~**A.** For tax periods beginning on or after January 1, 1993, the following taxpayers shall remit the following tax payments:~~

~~1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $100,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;~~

~~2. Corporations which had an Arizona income tax liability during the prior tax year of $100,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.~~

~~**B.** For tax periods beginning on or after January 1, 1994, the following taxpayers shall remit the following tax payments:~~

~~1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $50,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;~~

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~~C.~~**A.** For tax periods beginning on or after January 1, 1997, ~~the following taxpayers shall remit the following tax payments:~~

~~1. Taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $20,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission;~~

~~2.~~ Corporations which had an Arizona income tax liability during the prior tax year of $20,000 or more shall remit Arizona estimated income tax payments by an authorized means of transmission.

B. For tax periods beginning on or after July 1, 2017, taxpayers who, under A.R.S. Title 43, Chapter 4, had an average Arizona quarterly withholding tax liability during the prior tax year of $5,000 or more shall remit Arizona withholding tax payments by an authorized means of transmission.

~~D.~~**C.** The average Arizona quarterly withholding tax liability is determined by dividing the taxpayer's total Arizona withholding tax liability for the calendar year by 4.

~~E. For tax periods beginning on or after July 1, 1997, taxpayers who, under A.R.S. Title 42, Chapters 8, 8.1, 8.2, 8.3, 9.1, and 9.2 had an annual tax liability during the prior calendar year of $1 million or more shall remit these tax payments by an authorized means of transmission.~~

D. For tax periods beginning on and after July 1, 2017, any taxpayer who under A.R.S. Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability during the prior calendar year of $20,000 or more shall remit these tax payments by an authorized means of transmission.

E. For tax periods after July 1, 2015, tobacco tax taxpayers are required to remit tobacco tax payments by an authorized means of transmission.

R15-10-303. Voluntary Participation

~~A. For tax periods beginning on or after January 1, 1993, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of less than $100,000 may elect to participate in the EFT Program by submitting to the~~

~~Department an electronic funds transfer authorization agreement that complies with R15-10-304.~~

~~**B.** For tax periods beginning on or after January 1, 1994, a taxpayer who, during the prior tax year, had a corporate income tax liability or an average quarterly withholding tax liability of less than $50,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.~~

~~**C.**~~**A.** For tax periods beginning on or after January 1, 1997, a taxpayer who, during the prior tax year, had a corporate income tax liability ~~or an average quarterly withholding tax liability~~ of less than $20,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with by R15-10-304.

~~**D.** For tax periods beginning on or after July 1, 1997, a taxpayer who, under A.R.S. Title 42, Chapters 8, 8.1, 8.2, 8.3, 9.1, and 9.2 had an annual tax liability during the prior calendar year, of less than $1 million dollars may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.~~

B. For tax periods beginning on or after July 1, 2017, a taxpayer who, during the prior tax year, had an average quarterly withholding tax liability of less than $5,000 may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with by R15-10-304.

~~**E.**~~**C.** For tax periods beginning on and after ~~January 1, 1999,~~ July 1, 2017, any taxpayer who has a ~~luxury~~ liquor tax liability may elect to participate in the EFT Program by submitting to the Department an electronic funds transfer authorization agreement that complies with R15-10-304.

D. For tax periods beginning on and after July 1, 2017, any taxpayer who under Title 42 Chapter 5 and Chapter 6, Articles 1 and 3, had an annual tax liability of less than $20,000 during the prior calendar year may elect to participate in the EFT Program by submitting to the

Department an electronic funds transfer authorization agreement that complies with R15-10-304.

~~F.~~**E.** A taxpayer authorized to participate in the EFT Program shall provide at least 30 days prior written notice to the Department if the taxpayer elects to cease voluntary participation in the EFT Program.

R15-10-304. Authorization Agreement

A. The payor shall register for an account and complete an electronic funds transfer authorization agreement on AZTaxes.gov, ALTO or ACH Credit Form prescribed by the Department, as applicable, or such other ~~in the~~ form prescribed by the Department at least 30 days prior to initiation of the first applicable transaction. The form shall include the following information:

1. Name and address of the taxpayer;
2. The taxpayer's tax identification number including a federal identification number, withholding tax identification number, transaction privilege tax identification number or other tax identification number, as appropriate;

~~2. Federal identification number of the taxpayer;~~

~~3. Withholding number of the taxpayer, if applicable;~~

~~4. Transaction privilege tax license number of taxpayer, if applicable;~~

~~5. Type of action being taken;~~

~~6. Tax type;~~

~~7. Method of payment;~~

~~8.~~3. Name and phone number of taxpayer's EFT contact person;

~~9.~~4. Name and address of any payroll service, if applicable;

~~10.~~5. Name and phone number of the payroll service's EFT contact person~~;~~, if applicable;

~~11. Financial institution name and address;~~

~~12. Type of bank account;~~

~~13. Name on bank account;~~

~~14. Bank account number; and,~~

~~15. Bank routing transit number.~~

6. For payments initiated on AZTaxes.gov or ALTO, the information must include the type of bank account, the bank account number and the bank routing transit number.

B. A payor shall submit a revised authorization agreement to the Department at least 30 days prior to any change in the information required in subsection (A).

R15-10-305. Methods of Electronic Funds Transfer

A. Payors shall use the ACH debit transfer method available through registration on AZTaxes.gov or ALTO to remit payment by electronic funds transfer unless the Department grants permission to use the ACH credit method.

B. The Department may authorize under a form prescribed by the Department in R15-10-304 the use of the ACH credit method for payors desiring to use this method. A payor that chooses to use the ACH credit method shall provide the payment information required in R15-10-306(B)(2).

C. The Department may withdraw permission to use the ACH credit method of payment if the payor shows disregard for the requirements and specifications of these rules by failing to:

1. Make timely electronic funds transfer payments,
2. Provide timely payment information,
3. Provide the required addenda record with the electronic funds transfer payment, or
4. Make correct payment.

D. Payors who~~, for reasons beyond their control,~~ are unable to use their established method of payment may request that the Department accept deposits to the Department account via wire transfer in accordance with the following:

1. The payor shall contact the Department, ~~state the reason which prevents timely compliance under either the ACH debit method or ACH credit method,~~ and obtain verbal approval to wire transfer the tax payment to the Department account prior to initiating the transmission.
2. Approved wire transfers shall be accompanied by an addenda record, that includes the same information required for ACH credit transfers under R15-10-306(B)(2).

R15-10-306. Procedures for Payment

A. Payors using the ACH Debit Method shall ~~report payment information to the Data Collection Center~~ log in to their account on AZTaxes.gov or ALTO as appropriate and, unless registering for the first time, shall arrange for electronic payment of the applicable taxes no later than the time prescribed by the ~~State Servicing Bank~~ AZTaxes.gov or ALTO on the last business day before the due date of the payment.

1. Payment information shall be communicated ~~by one of the following means:~~ automatically to the Department through AZTaxes.gov or ALTO, as applicable, once payment arrangements have been made by payors and accepted by AZTaxes.gov or ALTO.
   ~~a. Operator-assisted communication of payment information made orally by rotary or touch-tone telephone,~~
   ~~b. Touch-tone communication of payment information made by entering data via key pad of a touch-tone telephone, or~~
   ~~c. Computer terminal linked with the Data Collection Center.~~
2. ~~Payors shall communicate the following payment information to the Data Collection Center:~~
   ~~a. Payor information number,~~
   ~~b. Taxpayer identification number,~~
   ~~c. Tax type,~~
   ~~d. Payment amount,~~
   ~~e. Tax period,~~
   ~~f. Payment due date, and~~
   ~~g. Payment sequence number.~~

B. Payors authorized to use the ACH credit method shall initiate payment transactions directly with a financial institution in a timely manner to ensure that the payment is deposited to the Department account on or before the payment due date.

1. All ACH credit transfers shall be in the CCD-plus addenda format. Payments not in this format may be rejected.

2. The addenda format, as specified in subsection (B)(1), shall include the following information:

   a. Taxpayer identification number,

   b. Tax type,

   c. Payment amount,

   d. Tax period,

   ~~e. Payment sequence number,~~

   ~~f.~~e. Taxpayer verification number,

   ~~g.~~f. Department account number, and

   ~~h.~~g. American Bank Association 9-digit number of the receiving bank.

TITLE 42. TAXATION

CHAPTER 1. ADMINISTRATION

ARTICLE 1. DEPARTMENT OF REVENUE

42-1005. Powers and duties of director

A. The director shall be directly responsible to the governor for the direction, control and operation of the department and shall:

1. Make such administrative rules as he deems necessary and proper to effectively administer the department and enforce this title and title 43.

2. On or before November 15 of each year issue a written report to the governor and legislature concerning the department's activities during the year. In any election year a copy of this report shall be made available to the governor-elect and to the legislature-elect.

3. On or before December 15 of each year issue a supplemental report which shall also contain proposed legislation recommended by the department for the improvement of the system of taxation in the state.

4. In addition to the report required by paragraph 2 of this subsection, on or before November 15 of each year issue a written report to the governor and legislature detailing the approximate costs in lost revenue for all state tax expenditures in effect at the time of the report. For the purpose of this paragraph, "tax expenditure" means any tax provision in state law which exempts, in whole or in part, any persons, income, goods, services or property from the impact of established taxes including deductions, subtractions, exclusions, exemptions, allowances and credits.

5. Annually, on or before January 10, prepare and submit to the legislature a report containing a summary of all the revisions made to the internal revenue code during the preceding calendar year.

6. Provide such assistance to the governor and the legislature as they may require.

7. Delegate such administrative functions, duties or powers as he deems necessary to carry out the efficient operation of the department.

B. The director may enter into an agreement with the taxing authority of any state which imposes a tax on or measured by income to provide that compensation paid in that state to residents of this state is exempt in that state from liability for income tax, the

requirement for filing a tax return and withholding tax from compensation. Compensation paid in this state to residents of that state is reciprocally exempt from the requirements of title 43.

42-1129. Payment of tax by electronic funds transfer

A. The department may require by rule, consistent with the state treasurer's cash management policies, that any taxpayer that owed twenty thousand dollars or more for the preceding taxable year in connection with any tax administered pursuant to this article, except individual income tax, shall pay the tax liability on or before the payment date prescribed by law in monies that are immediately available to the state on the date of the transfer as provided by subsection B of this section.

B. A payment in immediately available monies shall be made by electronic funds transfer, with the state treasurer's approval, that ensures the availability of the monies to this state on the date of payment.

C. The taxpayer shall furnish evidence as prescribed by the department that the payment was remitted on or before the due date.

D. A taxpayer who is required to make payment by electronic funds transfer but who fails to do so is subject to the civil penalties prescribed by section 42-1125, subsection O.

E. A failure to make a timely payment in immediately available monies as prescribed pursuant to this section is subject to the civil penalties prescribed by section 42-1125, subsection D.

TITLE 42. TAXATION

CHAPTER 3. LUXURY PRIVILEGE TAX

ARTICLE 2. LEVY AND PAYMENT

42-3053. Method of payment; receipts; electronic filings of returns and reports

A. Except as provided in subsection B of this section, all remittances of taxes for the purchase of Arizona tax stamps imposed by this chapter shall be made by bank draft, check, cashier's check, money order, cash or electronic transfer to the department, which shall issue receipts to the taxpayers. A remittance other than cash does not constitute a final discharge of liability for the tax levied by this chapter until it has been paid in cash to the department.

B. Beginning on July 1, 2015, any distributor remitting taxes levied under this chapter on any tobacco product other than cigarettes that is subject to tax under this chapter is required to pay the tax liability on or before the payment date in monies that are immediately available to the state on the date of transfer. The payment in immediately available monies must be made by electronic funds transfer and with the state treasurer's approval. The distributor must furnish evidence as prescribed by the department that the payment was remitted on or before the payment due date. A distributor who is required to make payment by electronic funds transfer under this chapter and who fails to do so is subject to the civil penalties prescribed by section 42-1125, subsection O. A distributor who fails to make a timely payment in immediately available monies as prescribed by this subsection is subject to civil penalties prescribed by section 42-1125, subsection D.

C. Beginning on July 1, 2015, a distributor of tobacco products is required to electronically file any report or return required under this chapter pursuant to an electronic filing program established by the department. The report or return is deemed filed and received by the department on the date of the electronic postmark pursuant to section 42-1105.02. A distributor who is required to electronically file any report or return under this chapter and fails to do so is subject to the civil penalty prescribed by section 42-1125, subsection K. For the purposes of this subsection, "electronic filing program" has the same meaning prescribed in section 42-1105.02.

TITLE 42. TAXATION

CHAPTER 1. TRANSACTION PRIVILEGE AND AFFILIATED EXCISE TAXES

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS

42-5015. Filing by electronic means

A taxpayer who is required to pay any transaction privilege and affiliated excise taxes to this state or a county or municipality may report and pay the required tax through electronic means. The electronic system shall be administered by the department of revenue. The department may enter into an agreement with the cities and towns that did not have an intergovernmental contract or agreement in effect as of January 1, 2013 with the department to provide for unified or coordinated licensing, collection and auditing programs for the cities and towns to contribute to the payment of the electronic system through money or resources. The electronic system shall:

1. Include a single point for licensing, filing a single return and paying transaction privilege and affiliated excise taxes for all state, county and municipal taxing jurisdictions.

2. Consolidate data in a manner compatible with the data systems of the department of revenue.

3. Capture data with sufficient specificity to meet the needs of the taxing jurisdictions.

4. Allow for identification of the correct taxing jurisdictions and tax rates based on the place where the transaction is sourced.

REGISTRAR OF CONTRACTORS (F-17-0301)
Title 4, Chapter 9, Article 1, General Provisions

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: April 4, 2017 **AGENDA ITEM: F-2**

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

FROM: Daniel Schwiebert, Legal Intern

DATE : March 21, 2017

SUBJECT: **REGISTRAR OF CONTRACTORS (F-17-0301)**
Title 4, Chapter 9, Article 1, General Provisions

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

This five-year-review report from the Arizona Registrar of Contractors (the "Registrar") covers the sole article in A.A.C. Title 4, Chapter 9, which relates to licensing and regulating Arizona contractors and subcontractors.

Article 1 contains nineteen rules and provides all provisions related to regulating licensees. These include general provisions, license classifications, application, renewal, and bonding requirements, examination schedules, civil penalty provisions, and minimum professional standards. Rules 102, 103, and 104 prescribe scopes of work for commercial, residential, and dual license classifications, and contain over fifty classifications per rule. The Registrar did not review rules R4-9-116 and R4-9-121 and will allow them to expire.

The Registrar licenses and regulates residential and commercial contractors and subcontractors. It has the power to create and issue licenses to qualified applicants, and to investigate and resolve complaints against licensed and unlicensed contractors. A.R.S. § 32-1104(A)(5) authorizes the Registrar to "[m]ake rules the registrar deems necessary to effectually carry out the provisions and intent of [A.R.S. Title 32, Chapter 10] . . . includ[ing] the adoption of minimum standards for good and workmanlike construction."

Background

The rules were last amended in July 2014, following requests from the regulated community and a five-year-review report approved in 2012, which highlighted concerns that the rules had not been amended since 1998. The 2014 amendments merged several commercial and residential license classifications into newly-created "dual" classifications, adopted "gender-neutral" terminology for the minimum professional standard, and clarified other processes and procedures. The amendments generally made the rules clearer to the regulated community.

R4-9-109, regarding restrictions on the trade name of a licensee or applicant, was not included in those amendments, and R4-9-131, regarding how the Registrar assesses civil penalties, has never been amended.

Proposed Action

The Registrar plans to initiate rulemaking to address unintended issues that arose following its 2014 amendments. The Registrar indicates that consolidating certain commercial and residential classifications into "dual" classifications has made some commercial licensees subject to take residential examinations (and pay into the Residential Recovery Fund) even though such licensees are not practicing residential contract work.

The Registrar's plan includes restructuring the dual classification system by reestablishing each classification's respective independent commercial and residential scopes of work. The Registrar's plan also includes increasing the threshold between small and general commercial contractor classifications, clarifying understandability and consistency issues, and addressing written and oral comments the Registrar received from stakeholders.

Substantive or Procedural Concerns

Staff is concerned with whether the use of "gender-neutral" terminology in R4-9-108 took into consideration that the term "workmanlike" is a long-standing term of art in the field.[1] Staff believes the rule could be made more effective by reverting subsection A to "workmanlike." The Registrar has indicated it intends to consider making the reversion, and so Staff feels confident the concern will be resolved.

ANALYSIS OF THE AGENCY'S REPORT

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

Yes. The Registrar has certified that is in compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Registrar indicates that R4-9-101 through 104, 106 through 117, and 120 are ineffective for the classification and clarity reasons described above, and in further detail in the report. The Registrar indicates it could amend R4-9-105, regarding restricted license classifications, for effectiveness by placing existing restricted license holders into non-restricted classifications that already cover the licensees' scopes of work.

[1] See e.g., Keystone Floor & More, LLC v. Arizona Registrar of Contractors, 223 Ariz. 27, 30–31, (App. 2009), which states that the Workmanship Rule codifies the implied warranty of workmanlike performance. See also, J. W. Hancock Enterprises, Inc. v. Registrar of Contractors, 126 Ariz. 511, 514, (1980), which states, "[A] workmanlike manner" is "doing the work … as a skilled workman should do it." Staff is concerned that the use of "professional manner" could alter the implied warranty, because whether "professional" is identical to "workman" has not been decided and thus rests on litigation and court interpretation.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Registrar indicates it has received written and verbal criticisms for R4-9-101, 108 through 117, and 130 through 131.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Registrar cites to both general and specific authority for the rules. A.R.S. § 32-1104(A)(5) states the Registrar shall "make rules the registrar deems necessary to effectually carry out the provisions and intent of this chapter." A.R.S. § 32-1105 requires the Registrar to adopt rules that create independent and dual license classifications. The Registrar cites to other statutes, which prescribe other duties on the Registrar, and which thus relate back to the Registrar's authority under A.R.S. § 32-1104(A)(5).

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

Yes. The Registrar indicates the rules are consistent with statutes and other rules, except for R4-9-102 through 104, which the Registrar indicates could be amended for stylistic and substantive consistency within the rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Registrar indicates that R4-9-102 through 106, 113, 117, and 120 have some problems with enforcement, and could be amended for clarity.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

Yes. The Registrar indicates that R4-9-102 through 120 could be amended to eliminate ambiguities, as indicated in further detail in the report.

The Registrar indicates that some terms, such as "low voltage," might be ambiguous and could be defined for clarity. The Registrar has indicated that the terms are generally commonly known in the industry, but is still evaluating whether they could vary in meaning between classifications. The Registrar also indicates that some scopes of work are unclear as to how they relate to similar scopes of work.

The Registrar indicates that R4-9-108 contains ambiguous language and could be made clearer by organizing the information in a more logical manner. However, the Registrar does not indicate any proposed amendments to this rule. Staff recommends using consistent language to make the rule clearer, such as by amending "professional manner" to "professional industry standards," since the term "professional industry standards" is defined in subpart B. Staff also believes "professional industry standards" could be made more clear and enforceable by referencing professional building code sources, such as the International Building Code (IBC) or the Uniform Building Code (UBC).

Staff identifies a potential clarity issue with R4-9-102 and 103, where the language in some classifications is written identically between commercial and residential versions. Staff believes that this clarity issue may lead residential licensees, for example, to become concerned with whether their residential-scale contracting has crossed the threshold into commercial-scale contracting.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Registrar indicates the rules are less stringent than federal laws and rules.

b. If so, is there statutory authority to exceed the requirements of federal law?

N/A

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Yes. The Registrar's rules were last amended after July 29, 2010 and require issuance of a license.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Yes. The Registrar indicates the rules comply with A.R.S. § 41-1037, since the issuance of the license is specifically authorized by state statute. Staff believes the rules, as written and as proposed, comply with one or more of the exceptions under A.R.S. § 41-1037.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Registrar indicates it completed the course of action proposed in the last five-year-review report by the rulemaking made effective in July 2014, which included amendments to the definitions in R4-9-101, replacing the term "workmanlike" in R4-9-108 with the term "professional," increases to the minimum bond amounts in R4-9-112, and enabling consideration of prior records in administrative hearings in R4-9-117.

Conclusion

The Registrar plans to initiate rulemaking upon approval of this report and finalization of its proposed amendments. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends approval.

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

MEETING DATE: April 4, 2017 **AGENDA ITEM: F-2**

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

FROM: GRRC Economic Team

DATE : March 21, 2017

SUBJECT: **REGISTRAR OF CONTRACTORS (F-17-0301)**
Title 4, Chapter 9, Article 1, General Provisions

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 9 rules contained in the five-year-review report.

The Registrar of Contractors (ROC) licenses and regulates residential and commercial contractors. The licensing process consists of reviewing license applications and issuing licenses to qualified applicants. The number of active Registrar of Contractors' issued licenses decreased from over 52,000 at its 2006 peak to approximately 37,000 as of December 30, 2016.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The ROC has determined that the rules in Article 9 are mostly effective and impose the least burden and costs to the regulated community. The cost to comply with these rules is minimal and necessary to protect public health and safety.

The ROC anticipates amending several of the rules in Article 9 to clarify language and reorganize content to improve enforcement. Additionally, the ROC anticipates allowing two rules to expire due to redundancy in language. The ROC expects to submit a rulemaking in July 2017.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

The report complies with A.R.S. § 41-1056. This analyst recommends approval.

ARIZONA REGISTRAR OF CONTRACTORS

Douglas A. Ducey, Governor | *Jeff Fleetham, Director*

March 18, 2017

Nicole A. Ong, Chairwoman
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. Fifteenth Ave., Ste. 402
Phoenix, AZ 85007
Re: Five-Year Review Report

Dear Chairwoman Ong:

A.R.S. § 41-1056 and R1-6-301 require agencies, at least once every five years, review all of its rules to determine whether any rule should be amended or repealed. The Registrar of Contractors has completed this review and submits the enclosed Five-Year-Review Report. This report includes a copy of the rules being reviewed, the most recent economic, small business, and consumer impact statements for each rule

Pursuant to R1-6-301(C), the Registrar of Contractors provides the following information:

a. Please contact Jim Knupp at 602-771-6710 or jim.knupp@azroc.gov, if you have any questions regarding this report.
b. The ROC has reviewed all but R4-9-116. License Renewal and R4-9-121. Unauthorized Communications, with the intent R4-9-116. License Renewal and R4-9-121. Unauthorized Communications expire.
c. No rules were not reviewed because the Council rescheduled the review of the rule.
d. The Registrar of Contractors certifies it is in compliance with ARS § 41-1091 Substantive policy statements; directory.

Pursuant to R1-6-301(A) enclosed you will find one paper copy of this Five-Year-Review Report and one electronic copy in the manner required by R1-6-301 (C) & (D).

Sincerely,

Jeff Fleetham
Director

1700 W. Washington Street • Phoenix AZ 85007-2812
602.542.1525 • Within AZ 877.692.9762 • Fax 602.542.1599 • www.azroc.gov

Five-Year-Review Report
Pursuant to A.R.S. § 41-1056

Title 4: Professions and Occupations
Chapter 9: Registrar of Contractors

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Attachment A: Prior Economic Impact Statements
Attachment B: Enabling Statutes
Attachment C: Title 4, Chapter 9
Attachment D: Proposed Amendments to Title 4, Chapter 9 as related to 5-Year-Rule Review

Agency Summary

Agency Mission

To promote quality construction by Arizona contractors through a licensing and regulatory system designed to protect the health, safety and welfare of the public.

Agency Description

The Registrar of Contractors (ROC) was established in 1931. The ROC licenses and regulates residential and commercial contractors. The licensing process consists of reviewing license applications and issuing licenses to qualified applicants. The regulatory process consists of investigating and facilitating the resolution of complaints against licensed and unlicensed contractors. Complaints against licensed contractors that go unresolved may result in discipline of license. Complaints against unlicensed contractors may result in criminal convictions with sentences of jail time, fines and restitution.

In 1981, the Legislature established the Residential Contractors' Recovery Fund as a function within the ROC. Statute requires residential contractors provide $200,000 for consumer protection. This protection may be established by (a) furnishing a $200,000 surety bond or cash deposit, or (b) paying the required assessment to participate in the Recovery Fund. Like a surety bond or cash deposit, the Recovery Fund reimburses homeowners for poor work or non-performance by a licensed residential contractor. Currently the assessment to participate in the Recovery Fund is $300 the first year and $150 every year thereafter. The maximum liability for the Recovery Fund is $200,000 per license and $30,000 per person.

The ROC is a 90/10 agency. This means that the agency is funded by 90% of its licensing fees. The remaining 10% of licensing fees are deposited in the state general fund. The ROC does not receive State general fund money.

Department Descriptions

<u>Licensing</u>
To process applications for new and renewal licenses in an efficient, thorough and timely manner; and to provide accurate, up-to-date information regarding license status, classification and bonds.

<u>Investigations</u>
To protect the health, safety and welfare of the public by investigating construction activity and unlicensed entities and advertising violations and, when warranted, taking action in the form of cease and desist orders, civil citations or criminal prosecution in a timely, fair and consistent manner.

<u>Inspections</u>
To protect the health, safety and welfare of the public by investigating alleged improper acts of licensed contractors and, when warranted, issuing citations and corrective orders in a timely, fair and consistent manner.

<u>Legal</u>
To issue a citation or impose discipline upon a contractor's license; and whether to assess penalties against an unlicensed contractor, while ensuring due process to all parties.

<u>Recovery Fund</u>
To provide equitable financial restitution in a timely manner to persons who have been injured by an act, representation, transaction or conduct of a licensed residential contractor.

Vision

The ROC believes Arizona's bright future relies on quality construction and the small business opportunities offered by construction. The ROC further believes Arizona residents can live, work and play in well-built, safe structures and enter a honorable field by becoming a licensed contracting professional. The ROC further believes the regulatory processes can be free of unnecessary burdens while also ensuring licensed contractors are qualified to perform work allowed by their license, and facilitating the timely and fair resolution of complaints between consumers and contractors.

External Environment

The Great Recession had a tremendous impact on Arizona. The State's construction industry suffered significant job loss as a result. The number of active Registrar of Contractors' issued licenses decreased from over 52,000 at 2006 peak to approximately 37,000 as of 12/30/2016.

Though the number of employed construction professionals has not returned to extraordinary pre-recession levels, the root cause of the current perceived shortfall is more likely a lack of properly skilled workers to fill specific needs of builders rather than a shortage of potential employees. Cooperation between education and business will be critical in filling these needs. Arizona State's Office of Economic Opportunity predicted construction jobs are expected to continue to grow at a rate of close to 4.1 percent a year over the next decade.

However, new start single-family building permits have not returned to incredible pre-recession levels, for 2016 and beyond the overall construction outlook in Arizona is good. Population growth is ticking up and residential building permits are on the rise.

Arizona Forecast*	**2016**	**2017**	**2018**	**2019**	**2020**
Residential Building Permits (units)	34,345.90	37,372.40	41,685.90	43,732.60	44,722.20
Percent Change from Year Ago	18.80%	8.80%	11.50%	4.90%	2.30%

**Arizona Housing Units Authorized By Building Permits: Total; Source: U. S. Bureau of the Census, C_40 Construction Reports; Economic and Business Center Forecast.*

The Registrar has made a number of internal changes, using LEAN process improvement protocols. Contractor license issue times and typical complaint process times have been reduced significantly.

During the strategic planning process, the Registrar considered the needs and expectations of Arizona's citizens. The mission statement and strategic issues will guide the Agency's efforts to improve the services it provides.

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Information that is Identical for Groups of Rules

1) General and specific statutes authorizing the rule

The adoption of the following rules is authorized by A.R.S. § 32-1104(A)(5):

R4-9-101 Definitions
R4-9-106 Examinations
R4-9-107 Classifying and Reclassifying Contractor Licenses
R4-9-108 Minimum Construction Standards
R4-9-109 Name of Licensee or Applicant
R4-9-110 Change of Legal Entity and Cancellation of License
R4-9-112 Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-113 Application Process
R4-9-115 Posting
R4-9-116 License Renewal
R4-9-117 Prior Record
R4-9-120 Rehearing or Review of Decision
R4-9-121 Unauthorized communications
R4-9-130 Schedule of Fees
R4-9-131 Assessment of Civil Penalties

The adoption of the following rules is authorized by A.R.S. § 32-1104(A)(5), A.R.S. § 32-1105 and ARS 32-1170.02(C):

R4-9-102 Commercial Contractor License Classifications and Scopes of Work
R4-9-103 Residential Contractor License Classifications and Scopes of Work
R4-9-104 Dual License Contracting Classifications and Scopes of Work
R4-9-105 Restricted License Classifications

3) Effectiveness of the rule in achieving the objective

The following rules are effective in achieving their objectives, except as noted in the analysis of individual license classifications:

R4-9-106. Examinations
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-110. Change of Legal Entity and Cancellation of License
R4-9-130. Schedule of Fees
R4-9-131. Assessment of Civil Penalties

The following rules are mostly effective in achieving their objectives, except as noted in the analysis of specific license classifications:

R4-9-101. Definitions
R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-108. Minimum Construction Standards
R4-9-109. Name of Licensee or Applicant
R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-113. Application Process
R4-9-115. Posting

R4-9-117. Prior Record
R4-9-120. Rehearing or Review of Decision

The following rules are not effective or necessary in achieving their objectives:
R4-9-116. License Renewal
R4-9-121. Unauthorized Communications

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The following rules are consistent with state and federal statutes and rules, except as noted in the analysis of individual rules.
R4-9-101. Definitions
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-108. Minimum Construction Standards
R4-9-109. Name of Licensee or Applicant
R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-113. Application Process
R4-9-115. Posting
R4-9-116. License Renewal
R4-9-117. Prior Record
R4-9-120. Rehearing or Review of Decision
R4-9-121. Unauthorized Communications
R4-9-130. Schedule of Fees
R4-9-131. Assessment of Civil Penalties

The following rules are mostly consistent with state and federal statutes and rules, except as noted in the analysis of specific license classifications.
R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-106. Examinations
R4-9-110. Change of Legal Entity and Cancellation of License

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

The following rules are enforced as written and no problems with enforcement exist.
R4-9-101. Definitions
R4-9-106. Examinations
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-108. Minimum Construction Standards
R4-9-109. Name of Licensee or Applicant
R4-9-110. Change of Legal Entity and Cancellation of License
R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-115. Posting
R4-9-116. License Renewal
R4-9-130. Schedule of Fees
R4-9-131. Assessment of Civil Penalties

The following rules are mostly enforced as written, but some problems with the enforcement exist as noted in the analysis of specific license classifications.

R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-105. Restricted License Classifications
R4-9-113. Application Process
R4-9-117. Prior Record
R4-9-120. Rehearing or Review of Decision
R4-9-121. Unauthorized Communications

6) Clarity, conciseness, and understandability of the rule

The following rules are clear, concise, and understandable, except as noted in the analysis of specific license classifications.

R4-9-101. Definitions
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-110. Change of Legal Entity and Cancellation of License
R4-9-116. License Renewal
R4-9-130. Schedule of Fees

The following rules are mostly clear, concise, and understandable, except as noted in the analysis of specific license classifications.

R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-105. Restricted License Classifications
R4-9-106. Examinations
R4-9-108. Minimum Construction Standards
R4-9-109. Name of Licensee or Applicant
R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-113. Application Process
R4-9-115. Posting
R4-9-117. Prior Record
R4-9-120. Rehearing or Review of Decision
R4-9-121. Unauthorized Communications
R4-9-131. Assessment of Civil Penalties

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has received no written criticism during the past five years of the following rules except as noted in the analysis of specific license classifications.

R4-9-101. Definitions
R4-9-108. Minimum Construction Standards
R4-9-109. Name of Licensee or Applicant
R4-9-110. Change of Legal Entity and Cancellation of License
R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits

R4-9-113. Application Process
R4-9-115. Posting
R4-9-116. License Renewal
R4-9-117. Prior Record
R4-9-130. Schedule of Fees
R4-9-131. Assessment of Civil Penalties

The agency has received no written criticism during the past five years of the following rules, except as noted in the analysis of specific license classifications.

R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-105. Restricted License Classifications
R4-9-106. Examinations
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-120. Rehearing or Review of Decision
R4-9-121. Unauthorized Communications

8) Estimated economic, small business, and consumer impact of the rule as compared to the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule

The economic impact statement submitted during the last making or amendment of the rule appears accurate as compared to the current economic impact of all rules reviewed, with the exception of the following rules:

R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-107. Classifying and Reclassifying Contractor Licenses

Despite the fact that the majority rules currently lend to minimal economic impacts, administrative burdens of the regulation may be reduced by increasing the clarity, understandability, and consistency of several rules. These changes could occur without any increases in the economic impact on those regulated by the rules.

A copy of previously completed economic impact statements are attached to this review. Economic impact statements for the two rules believed to be inaccurate are being developed.

9) Any analysis submitted to the agency by another person that compares the rule's impact on this state's business competiveness to the impact on businesses in other states

The agency has received no outside analysis comparing these rules to those in other states.

10) If applicable, that the agency completed the course of action indicated in the agency's previous five-year review

The Agency made rulemaking amendments in 2014. Some of the amendments appear to be related to the agency's previous five-year-review, including in the following rules:

R4-9-101. Definitions
R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-106. Examinations
R4-9-108. Minimum Construction Standards

R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-113. Application Process
R4-9-115. Posting
R4-9-116. License Renewal
R4-9-117. Prior Record
R4-9-120. Rehearing or Review of Decision
R4-9-130. Schedule of Fees

11) A determination that the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective

The agency determined the rules impose the least amount of regulatory burden necessary to achieve the underlying regulatory objective, except:

R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-105. Restricted License Classifications
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-109. Name of Licensee or Applicant
R4-9-120. Rehearing or Review of Decision

Of those exceptions listed above, the burden may be reduced by better clarifying language in the following rules, except:

R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-107. Classifying and Reclassifying Contractor Licenses

12) Less Stringent than Federal

These rules have been determined to be less stringent than federal laws and rules.

13) Compliant with ARS 41-1037

These rules have been determined to be compliant with ARS 41-1073, except:

R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-107. Classifying and Reclassifying Contractor Licenses

14) Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule, or to make a new rule

Rule	Title	Proposed Action	Date
R4-9-102	Commercial Contractor License Classifications and Scopes of Work	Retain rule. No amendment planned at this time, except as otherwise noted separately for the license classifications listed in paragraph 3 of the analysis. Draft included in attachment D.	7/1/2017
R4-9-103	Residential Contractor License Classifications and Scopes of Work	Retain rule. No amendment planned at this time, except as otherwise noted separately for the license classifications listed in paragraph 3 of the analysis. Draft included in attachment D.	7/1/2017

R4-9-104	Dual License Contracting Classifications and Scopes of Work	Retain rule. Amend the rule improving its effectiveness in achieving its objective and to address concerns expressed in paragraphs 3 and 13 of the analysis. Also, amend as otherwise noted separately for the license classifications listed in paragraph 3 of the analysis. Draft included in attachment D.	7/1/2017
R4-9-105	Restricted License Classification	Retain rule. Amend to improve application of the rule as noted in paragraph 3 of the analysis and to address concerns expressed in paragraph 7 of the analysis. Draft forthcoming.	7/1/2017
R4-9-106	Examinations	Retain rule. Amend to improve clarity and understandability by providing more information about the exams and exam process and reorganize content and rewrite using more direct and understandable language. Draft included in attachment D.	7/1/2017
R4-9-107	Classifying and Reclassifying Contractor Licenses	Retain rule. In order to address concerns expressed in paragraph 13 of the analysis of R4-9-104 Dual Contractor License Classifications and Scopes of Work, a new rule (R4-9-111. Opting out of Dual License Classifications) will be proposed after report is adopted and separation of the classifications will be sought simultaneously.	7/1/2017
R4-9-108	Minimum Construction Standards	Retain rule. Amend rule to reverse removal of "workmanship standards." Draft included in attachment D.	7/1/2017
R4-9-109	Name of Licensee or Applicant	Retain rule. Amend rule to improve clarity as stated in paragraph 6 of the analysis. Draft included in attachment D.	7/1/2017
R4-9-110	Change of Legal Entity and Cancellation of License	Retain rule. Amend rule to improve consistency with ARS 29-2406 Effect of conversation and further clarify by defining "legal entity changes and generally reorganizing content. Draft included in attachment D.	7/1/2017
R4-9-113	Application Process	Retain rule. Amend the rule to be a more clear, consistent and accurate reflection of the agency's enforcement policy. Draft included in attachment D.	7/1/2017
R4-9-115	Posting	Retain rule. Amend to clarify language through reorganization of the content and by better clarifying enforcement as noted in paragraph 6 of the analysis. Draft included in attachment D.	7/1/2017

R4-9-117	Prior Record	Retain rule. Amend to clarify language and improve effectiveness as noted in paragraph 3 of the analysis. Draft included in attachment D.	7/1/2017
R4-9-120	Rehearing or Review of Decision	Retain rule. Amend to clarify language and improve enforcement and clarity as stated in paragraph 5 and 6 of the analysis. Concerns expressed in paragraph 7 will represent a policy implementation. Draft of amendment forthcoming.	7/1/2017
R4-9-131	Assessment of Civil Penalties	Retain rule. The clarity of the rule can be improved by reorganizing content in a more direct and straightforward manner. Draft of amendment forthcoming.	7/1/2017

The following rules will be allowed to expire:

R4-9-116	License Renewal	Allow to expire. Rule is ineffective as it is redundant to language provided in statute.	Adoption of rule review
R4-9-121	Unauthorized Communications	Allow to expire. Objective of rule is enforced more appropriately as a policy and further is not clear as to who a "decision-making employee" represents.	Adoption of rule review

No action is planned for the following rules:

R4-9-101	Definitions	Retain rule. No amendment planned. If determined necessary, however, the agency will move to amend to address questions raised in paragraph 3 of the analysis regarding lack of effectiveness and necessity for the rule.
R4-9-112	Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits	Retain rule. No amendment planned. If determined necessary, however, the agency will move to amend rule to clarify language noted in paragraph 6 of the analysis.
R4-9-130	Schedule of Fees	Retain rule. No action planned.

New rules to be sought:

R4-9-111	Opting out of Dual License Classification	Rule to be introduced with suggested amendments listed in 5-year-rule review.	Exemption Approval Received: 12/21/2016
R4-9-119	Prehearing Disclosure	Rule to be introduced with suggested amendments listed in 5-year-rule review.	Exemption Approval Received: 11/30/2016

R-4-9-101 Definitions

2) Objective of the rule

The objective of this rule is to provide definitions for words of legal significance used in other agency statutes and rules.

3) Effectiveness of the rule in achieving the objective

The agency questions the effectiveness of the rule, in general, as these terms – "Appurtenances" and "Licensee" – are common to the industry and provide no legal significance.

10) Whether the agency completed the course of action proposed in the previous Five-year-review Report

In 2014 rulemaking, it appears the agency partially completed the course of action proposed by including "limited liability company" in the parenthetical description of a business entity. Instead of moving (C) to R4-9-102, it appears the rulemaking simply eliminated the content.

14) New action/date planned

Retain rule. No amendment planned at this time, unless further review reveals paragraph 3 points to a lack of effectiveness or necessity for the rule.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work

2) Objective of the rule

The objective of this rule is to provide commercial license classifications and scope descriptions reflecting the division of work among classifications which is common in the construction industry. Though code, manufacturer specifications and industry standards may certainly differ, commercial scopes of work are often identical between residential and commercial license classifications. The scopes are also used as a foundation for evaluation of the work experience of license applicants and for the development of trade tests.

3) Effectiveness of the rule in achieving the objective

This rule is effective in achieving its objective except for the following license classifications: A, A-11, A-17, B-1, B-2, C-6, and C-9. Each of these license classifications will be discussed separately.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except as otherwise noted separately for the license classifications listed in paragraph 3.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced and without problems, except as otherwise noted separately for the license classifications listed in paragraph 3.

6) Clarity, conciseness, and understandability of the rule

The rule is clear, concise, and understandable, except as otherwise noted separately for the license classifications listed in paragraph 3.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has not received any written criticisms, except as otherwise noted separately for the license classifications listed in paragraph 3.

14) New action/date planned

Retain rule. Some amendments planned, as noted in paragraph 3. 7/1/2017.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: A, General Engineering

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective with the exception that it does not state that "public right-of-ways" are included in the scope of work. The Agency frequently receives inquiries from municipalities asking whether a B-1, General Commercial Contractor or a A, General Engineering is appropriate for scopes of work related to "public right-of-ways." The B-1, would not be appropriate for "public right-of-ways," whereas the A. is appropriate. By specifying this permitted scope of work, the Agency believes the effectiveness of the rule is improved.

6) Clarity, conciseness, and understandability of the rule

The rule is clear, concise, and understandable, except as otherwise noted in paragraph 3. Despite this license classification generally being associated with the construction of any public works, the scope description does not clearly identify common public works such as public right-of-ways. As a result, the current license classifications do not clearly establish whether public right-of-ways should be constructed by the holders of an A, General Engineering, or the B-1, General Commercial Contractor license.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: A-11, Steel and Aluminum Erection

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective as the scope of permitted work with the exception that it is not consistent with residential R-17 Structural Steel and Aluminum. When residential and commercial scopes unnecessarily use a mixture of vague and specific terms, confusion is caused and unintentionally, potentially limits the scopes, respectively. Further, by having unnecessarily varying language in a commercial scope versus a residential scope, when the scopes are intended to allow for the same work, the public becomes confused as to whether the scopes of work actually vary. In the instance of the R-17, unnecessarily vague terms include "shapes and members."

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except as otherwise noted in paragraph 3.

6) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced and without problems, except as otherwise noted in paragraph 3.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: A-17, Electrical and Transmission Lines

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective with the exception that the scope does not specify "cellular and communication towers" are also included with permitted work.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable. The scope should be clearer as to what type of work is allowed inside a commercial building. The confusion is caused by the words in the first sentence regarding "public right-of-ways" and the words in the last sentence regarding "inside a building". As noted in paragraph 3, it is not as effective as it could be in providing information/instruction as to what is permitted work as we receive many inquiries as to whether cellular and communication towers are permitted.

11) Least Burden and Costs of the Rule to Regulated Persons

There is no public safety or public health reason as to why the A-17 would not be able to install electrical systems less than 600 volts on or inside a building and, therefore, the rule does not impose the least burden as it excludes electrical systems of less than 600 volts on or inside a building.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: B-1, General Commercial Contractor

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the scope specifies a range of dual license classifications that incorrectly indicate residential work, which is not permitted. The rule also fails to be effective as it uses "chattels" which is not a term commonly used in the construction industry.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes enforcement problems because of the issues noted in paragraphs 3 and 6.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable, as evidenced by the frequent questions related to allowable work of the classification. Often the questions arise in the context of whether an A, General Engineering license or a B-1, General Commercial Contractor is needed to perform specific construction contracts. The rule also fails to be clear by identifying a range of scopes, of which not all are allowed to be performed by the classification.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has received numerous calls regarding this rule. Questions raised are those identified in paragraph6.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: B-2, General Small Commercial Contractor

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the scope specifies a range of dual license classifications that incorrectly indicate residential work, which is not permitted.

The agency also believes the rule is not effective as the $750,000 limit is insufficient to perform much small commercial construction. Separate from this 5-year-rule review, the Agency is pursuing rulemaking to increase the limit to $2,000,000.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes enforcement problems because of the issues noted in paragraph 3 and 6.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable, as evidenced by the frequent questions related to allowable work of the classification. The rule also fails to be clear by first identifying a range of scopes, of which not all are allowed to be performed by the classification.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has received numerous written criticisms of this rule. One of the criticisms is that the parameters distinguishing the scope of the A, General Engineering license and the B-2, General Small Commercial Contractor are not clear. The agency hopes to amend these license scopes to resolve this criticism.

Another criticism is that “insulating concrete forms” (ICF) should be excluded from the scope of the B-1 license classification. The agency believes that unlike plumbing and electrical construction, use of ICF’s should not be a restricted trade.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: C-6, Swimming Pool Service and Repair

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective except as noted in paragraph 4.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except the scope of work is not consistent with the residential R-6 Swimming Pool Service and Repair license. As a result, the scopes appear to allow for varied types of work, which when considering the C-6 and R-6 is not appropriate. Though code, manufacturer specifications and industry standards may certainly differ, commercial scopes of work are often identical between residential and commercial license classifications. The C-6 scope appears overly specific and potentially limits the scope whereas the R-6 appears clear and straightforward in describing permitted work by the licensees.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes enforcement problems because of the issues noted in paragraph 4.

6) Clarity, conciseness, and understandability of the rule

The rule is clear, concise, and understandable, except as otherwise noted in paragraph 4.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: C-9, Concrete

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective except as noted in paragraph 4.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except the scope of work is not consistent with the residential R-9 Concrete license and as a result the scopes appear to allow for varied types of work.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes enforcement problems because of the issues noted in paragraph 4.

6) Clarity, conciseness, and understandability of the rule

The rule is clear, concise, and understandable, except as otherwise noted in paragraph 4.

R4-9-102 Commercial Contractor License Classifications and Scopes of Work: C-16, Fire Protection Systems

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

Agency received written criticism regarding license classification being permitted to install or repair low voltage signaling systems. Criticism centered on requirements for certification not related to the Agency as rationale. Agency fails to find credible rationale for removing the ability of the license classification to perform such work.

R4-9-103 Residential Contractor License Classifications and Scopes of Work

2) Objective of the rule

The objective of this rule is to provide residential license classifications and scope descriptions reflecting the division of work which is common in the construction industry. Though code, manufacturer specifications and industry standards may certainly differ, commercial scopes of work are often identical between residential and commercial license classifications. The scopes are also used as a foundation for evaluation of the work experience of license applicants and for the development of trade tests.

3) Effectiveness of the rule in achieving the objective

This rule is effective in achieving its objective except for the following license classifications: B-, B-3, R-4, R-16, R-17, R-37, R-39, and R-62. Each of these license classifications will be discussed separately.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except as otherwise noted for the license classifications listed in paragraph 3.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced and without problems, except as otherwise noted for the license classifications listed in paragraph 3.

6) Clarity, conciseness, and understandability of the rule

The rule is clear, concise, and understandable, except as otherwise noted for the license classifications listed in paragraph 3.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has not received any written criticisms, except as otherwise noted for the license classifications listed in paragraph 3.

14) New action/date planned

Retain rule. No amendment planned at this time, except as otherwise noted separately for the license classifications listed in paragraph 3. 7/1/2017.

R4-9-103 Residential Contractor License Classifications and Scopes of Work: B, General Residential Contractor

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the scope specifies a range of dual license classifications that incorrectly indicate residential work, which is not permitted.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes enforcement problems because of the issues noted in paragraphs 3 and 6.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable, as evidenced by the frequent questions related to allowable work of the classification. The rule excludes work authorizes by A-, B-1, and B-2 scopes, but fails to exclude other engineering and commercial scopes. The rule also fails to be clear by identifying a range of scopes, of which not all are allowed to be performed by the classification.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has received verbal criticisms of and numerous questions on this rule for the reason noted in paragraphs 3 and 6.

R4-9-103 Residential Contractor License Classifications and Scopes of Work: B-3, General Remodeling and Repair Contractor

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the scope specifies a range of dual license classifications that incorrectly indicate residential work, which is not permitted.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes enforcement problems because of the issues noted in paragraphs 3 and 6.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable, as evidenced by the frequent questions related to allowable work of the classification. The rule excludes work authorizes by A-, B-1, and B-2 scopes, but fails to explicitly allow engineering work permitted by the residential B-4 General Residential Engineering Contractor license and exclude other engineering and commercial scopes. The rule also fails to be clear by identifying a range of scopes, of which not all are allowed to be performed by the classification.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The agency has received verbal criticisms of and numerous questions on this rule for the reason noted in paragraphs 3 and 6.

R4-9-103 Residential Contractor License Classifications and Scopes of Work: R-4, Boilers, Including Solar

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is not consistent with other statutes and rules, as the scope language is vastly different from that of the commercial C-4 Boilers, Steamfitting and Process Piping and results in confusion as to what is permitted.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear as differences in language between the residential R-4 Boilers, Including Solar and the commercial C-4 Boilers, Steamfitting and Process Piping differ raising questions as to whether omitted language indicates non-permitted scopes of work.

R4-9-103 Residential Contractor License Classifications and Scopes of Work: R-16, Fire Protection

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective as it is not clear as noted in paragraph 6.

6) Clarity, conciseness, and understandability of the rule

This rule is not clear as it states "approved types of" fire prevention and fire protection systems, but fails to identify what "approved types" would signify. The rule would also be clearer if identifying low voltage signaling systems are permitted while excluded all of electrical.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

Agency received written criticism regarding license classification being permitted to install or repair low voltage signaling systems. Criticism centered on requirements for certification not related to the Agency as rationale. Agency fails to find credible rationale for removing the ability of the license classification to perform such work.

R4-9-103 Residential Contractor License Classifications and Scopes of Work: R-17, Structural Steel and Aluminum

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective except that the scope of permitted work is not consistent with commercial A-11 Steel and Aluminum Erection license raising questions as to whether omitted language indicates non-permitted scopes of work. Though code, manufacturer specifications and industry standards may certainly differ, commercial scopes of work are often identical between residential and commercial license classifications. The language "shapes and members" also represent specific terms and could be viewed as limiting work intended to be included.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except as otherwise noted in paragraph 3.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced and without problems, except as otherwise noted in paragraph 3.

R4-9-103 Residential Contractor License Classifications and Scopes of Work: R-62, Minor Home Improvements

3) Effectiveness of the rule in achieving the objective

This rule is effective in achieving its objective, except as discussed in paragraphs 4 and 6.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

As with the 2011 rule-review, the rule is consistent with other statutes and rules, except in its use of the word "performed" in the last sentence of the scope description. The word "performed" doesn't indicate whether the licensee may subcontract, or whether the property owner must arrange to have the work performed. In contrast the scope description for the C-61 Limited Remodeling and Repair Contractor license indicates that the licensee can subcontract this same list of construction activities.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

The rule is currently enforced but causes occasional enforcement problems because of the issues noted in paragraph 4.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable because the word "performed" does not indicate whether subcontracting is allowed. Additionally, "$5,000 for labor and materials per project per dwelling or appurtenance" would seem to imply if multiple appetences exist as part of the project, multiple dollar limits of $5,000 would be permitted.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

Though not received since the 2011 rule review, the agency previously received written criticisms taking the position that the word "performed" does not allow subcontracting.

R4-9-104 Dual License Contracting Classifications and Scopes of Work

2) Objective of the rule

The objective of this rule is to provide dual (residential and commercial) license classifications and scope descriptions reflecting the division of work which is common in the construction industry. The scopes are also used as a foundation for evaluation of the work experience of license applicants and for the development of trade tests.

3) Effectiveness of the rule in achieving the objective

This rule is effective in achieving its objective, except as otherwise noted for the license classifications listed previously for R4-9-102, R4-9-103, for license classifications CR-7, CR-40, CR-48, and CR-60, and as noted in paragraph 13. Each of these license classifications will be discussed separately.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

This rule is consistent with other statutes and rules, except as otherwise noted for the license classifications listed in paragraphs 3 and 13 and as indicated separately in this report for specific license classifications within R4-9-102, R4-9-103.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced, except as otherwise noted for the license classifications listed in paragraph 3, and as indicated separately in this report for specific license classifications within R4-9-102, R4-9-103.

6) Clarity, conciseness, and understandability of the rule

This rule is clear, concise, and understandable, except as otherwise noted for the license classifications listed in paragraph 3 and as indicated separately in this report for specific license classifications within R4-9-102, R4-9-103.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

The Agency received many verbal and written criticisms regarding the elimination of many commercial-only and residential-only license classification as noted in paragraphs 11 and 13.

11) Least Burden and Costs of the Rule to Regulated Persons

The rule does not impose the least burden as noted in paragraph 13.

13) Compliance with ARS 41-1037

Questionable, with relation to ARS 41-1037(A)(4).

In 2014, the Agency sought rulemaking that eliminated many commercial-only and residential-only licenses and reclassified impacted license holders into a more general license – the respective dual license classification. The rulemaking proposal stated minimal economic impact, but required applicants and impacted licensees to obtain both residential and commercial bonds, new applicants for impacted classifications to test for both commercial and residential content, and commercial-only businesses to be

assessed by the Registrar's Residential Recovery Fund regardless of whether they were performing residential work.

Impacted licenses included CR-1, CR-3, CR-7, CR-8, CR-10, CR-12, CR-14, CR-15, CR-21, CR-24, CR-31, CR-34, CR-36, CR-38, CR-40, CR-41, CR-42, CR-45, CR-48, CR-54, CR-56, CR-57, CR-60, CR-61, CR-62, CR-63, CR-65, and CR-67.

The Agency will seek to reverse the elimination of the commercial-only and residential-only classifications by reestablishing these classifications and adding R4-9-111 to enable current license holders the ability to move, upon renewal, from a dual license to a commercial or residential classification or remain a dual licensee. Applicants will be able to apply for the residential, commercial or dual license classifications.

14) New action/date planned

Retain rule. Amend the license scopes so the language is more easily understood and consistent with other laws and the rule is more effective in achieving its objective and to address concerns expressed in paragraphs 3 and 13. 7/1/2017.

R4-9-104 Dual License Contracting Classifications and Scopes of Work: CR-7, Carpentry

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective with the exception that the scope does not specify "Windows" are also included with permitted work and the Agency desires to be clearer on this permitted work.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes occasional enforcement problems because of the issues noted in paragraph 3.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable as noted in paragraph 3.

R4-9-104 Dual License Contracting Classifications and Scopes of Work: CR-40, Carpentry

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the scope does not specify "radiant barriers" are also included with permitted work as part of "Insulation materials."

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except as otherwise noted in paragraph 3.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes occasional enforcement problems because of the issues noted in paragraph 3.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable as noted in paragraph 3.

R4-9-104 Dual License Contracting Classifications and Scopes of Work: CR-48, Ceramic, Plastic and Metal Tile

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective except that the scope does not clarify "9. Quarry" signifies tile. Confusion regarding this matter is compounded with "10. Stone tiles such as marble or slate" qualifying "tile." By not specifying this qualification to the quarry type, the classification fails to properly instruct permitted work.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes occasional enforcement problems because of the issues noted in paragraph 6.

6) Clarity, conciseness, and understandability of the rule

The rule is clear, concise and understandable with the exception that the scope does not clarify "9. Quarry" signifies tile. Confusion regarding this matter is compounded with "10. Stone tiles such as marble or slate" qualifying "tile." This non-specificity results in issues with compliance as the scope is only permitted to install and repair quarry tiles, but the scope is not clear in that regard.

R4-9-104 Dual License Contracting Classifications and Scopes of Work: CR-60, Finish Carpentry

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the scope does not exclude "overhead garage doors" as permitted work. Adding this exclusion to "6. Automatic door closers" would be beneficial.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except as otherwise noted in paragraph 3.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but causes occasional enforcement problems because of the issues noted in paragraph 3.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable as noted in paragraph 3.

R4-9-105 Restricted License Classifications

2) Objective of the rule

The objective of this rule is to provide a specialty license to contractors performing in a unique area of construction that is not covered by another existing license and for which the applicant is qualified by experience and training.

3) Effectiveness of the rule in achieving the objective

The rule is not effective in achieving its objective because the Agency has historically issued a high frequency of restricted licenses for scopes of work more appropriately covered by an existing license classification. That is to say, the restricted license has been issued to allow partial or limited scopes of work already existing in other license classifications rather than requiring the applicant to obtain the actual license under which the limited or partial scope exists. Important to note for consideration of issuing a restricted license is that when an applicant applies for a CR-5 a trade examination is not required and experience requirements are not specified. There have also been inconsistencies as to when issuing restricted licenses, especially for similarly scoped applications. The Agency has also not taken advantaged of using trends to move similarly restricted licenses into their own license classification where it may be better standardized.

The Agency believes inconsistent application of this rule largely varies by Director and licensing department manager.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency

The rule is consistent with other statutes and rules, except with application of when and how the issuance of licenses is accomplished as noted in paragraphs 3.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but has been historically inconsistent with application of the rule as noted in paragraph 3.

6) Clarity, conciseness, and understandability of the rule

The rule is not clear, concise and understandable and causes issues as noted in paragraph 3.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings

As indicated in the 2011 five-year-rule review, the agency received written and verbal criticisms that the Registrar has issued restricted licenses for scopes of work more appropriately covered by an already existing license classification.

11) Least Burden and Costs of the Rule to Regulated Persons

The rule does not impose the least burden as due to lack of consistency as noted in paragraph 3.

14) New action/date planned

Retain rule. Amend to improve application of the rule as noted in paragraph 3 and to address concerns expressed in paragraph 7.

R4-9-106 Examinations

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5), A.R.S. § 32-1122(F)(2), & A.R.S. § 32-1170.02

2) Objective of the rule
The objective of this rule is to establish a minimum passing exam score and a minimum frequency of examination administrations. The purpose of the exams is for the applicant to demonstrate general knowledge of building, safety, health, business and lien laws of Arizona.

6) Clarity, conciseness, and understandability of the rule
The clarity of the rule can be improved by providing more information about the exam process and requirements. For example, the rule should clarify the differences between the "Business Management Examination" and the "Trade Examination." The waiver should be clarified to better describe conditions for waiver and which tests are able to be waived. Also, much of the content should be reorganized and described in simpler, more direct language.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings
The agency has received numerous questions on this rule for the reason noted in paragraph 6.

14) New action/date planned
Retain rule. Amend to improve clarity and understandability as noted in paragraph 6. 7/1/2017

R4-9-107 Classifying and Reclassifying Contractor Licenses

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5) and A.R.S. § 32-1122

2) Objective of the rule
The objective of this rule is to explain the statutory authority for rulemaking made effective July 2014 and to explain the process whereby the Registrar eliminated licenses and reclassified the eliminated licenses to remaining, comparable licenses.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings
The agency received verbal criticisms of and numerous questions on this rule for reasons noted in R4-9-104 Dual Contractor License Classifications and Scopes of Work, paragraph 13.

11) Least Burden and Costs of the Rule to Regulated Persons
The rule does not impose the least burden as noted in R4-9-104 Dual Contractor License Classifications and Scopes of Work, paragraph 13.

13) Compliance with ARS 41-1037
Questionable, for the reasons noted in R4-9-104 Dual Contractor License Classifications and Scopes of Work, paragraph 13.

14) New action/date planned
Retain rule. Address concerns expressed in paragraphs 7, 11, and 13. Best method will be chosen, drafted and included with prospective rulemaking which will be effective 7/1/2017.

R4-9-108 Minimum Construction Standards

2) Objective of the rule

The objective of the rule is to provide minimum construction standards by which the public, contractors, and the agency may evaluate the work in order to enforce A.R.S. § 32-1154(B).

3) Effectiveness of the rule in achieving the objective

The rule is effective in achieving its objective but can be improved by further clarifying as noted in paragraph 6 and returning to "workmanship standards" as this a phrase common to and understood by the industry.

6) Clarity, conciseness, and understandability of the rule

The understandability of the rule may be improved by better organizing information in a logical manner and rewriting the rule using more direct and understandable language. Discussions regarding improving understandability included indicating, if possible, a hierarchy of when and how "code," "manufacturer specifications"/recommendations, "workmanship," and "professional manner" intertwine and impact agency decisions. No draft has been created as of yet.

10) Whether the agency completed the course of action proposed in the previous Five-year-review Report

It appears the agency completed the course of action proposed by amending "workmanship standards" to gender neutral by making it "Minimum Construction Standards" and professional manner. GRRC reviewers suggest a return to "workmanship standards" may be appropriate as this terminology is common to the industry and the Agency is amenable to reversing this removal.

14) New action/date planned

The Agency will amend to reverse the removal of "workmanship standards" and may amend to improve understandability, but does not have draft language at this time.

R4-9-109 Name of Licensee or Applicant

2) Objective of the rule

The objective of this rule is to minimize the possible confusion of the public regarding licensees with similar names and to introduce greater clarity into licensing process with respect to names.

3) Effectiveness of the rule in achieving the objective

This rule is mostly effective but may be improved by making amendments noted in paragraph 6.

6) Clarity, conciseness, and understandability of the rule

This rule is mostly clear, concise, and understandable, but may be improved by defining "Official Name of Record" and "Trade Name and DBA". The rule may also become more understandable by reorganizing content, by more clearly defining when an applicant's name may be used as a basis for denial and by more clearly explain when the Registrar will grant a licensee's request for change to its name on a license.

14) New action/date planned

Retain rule. Amend rule to improve clarity as stated in paragraph 6. 7/1/2017

R4-9-110 Change of Legal Entity and Cancellation of License

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5), A.R.S. § 32-1124(B), & A.R.S. § 32-1151.01

2) Objective of the rule
The objective of this rule is to explain (1) what a license must do in the event of a change to their legal entity, and (2) provide an effective means to cancel a license.

4) Consistency of the rule with state and federal statutes and rules, and a listing of the statutes or rules used in determining the consistency
The rule is mostly consistent with other statutes and rules, except with regards to Title 29, Chapter 6, Article 4's Effect of conversion (ARS 29-2406).

6) Clarity, conciseness, and understandability of the rule
The clarity of the rule can be improved by providing more information how ARS 29-2406 impacts the rule as noted in paragraph 4. The clarity may also be improved by defining "legal entity changes" and generally reorganizing content.

14) New action/date planned
Retain rule. Amend rule to improve consistency with ARS 29-2406 Effect of conversation and further clarify by defining "legal entity changes and generally reorganizing content. 7/1/2017

R4-9-112 Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5), A.R.S. § 32-1152(B), & A.R.S. § 32-1152.01

2) Objective of the rule
The objective of this rule is to provide a graduated dollar amount of required bonding for a contractor's license based on the contractor's anticipated gross volume of work in order to provide financial protection to those with whom the licensee contracts.

3) Effectiveness of the rule in achieving the objective
The rule is mostly effective in achieving its objective but may be improved by further clarifying as noted in paragraph 6.

6) Clarity, conciseness, and understandability of the rule
The clarity of the rule can be improved by providing a definition for "gross underestimate knowingly made by a licensee" or by otherwise removing and providing effective language.

A draft has not yet been created as the Agency continues to consider the intent of this language. "The Registrar considers a *gross underestimate knowingly made by a licensee to be a material misrepresentation*, which can subject the licensee to suspension or revocation of license." By joining "gross underestimate knowingly made by a licensee" to "a material misrepresentation," the rule would appear to be referencing ARS 32-1154(A)(5), which states, "[m]isrepresentation of a material fact by the applicant in obtaining a license" represents grounds for revocation or suspension.

The Agency believes it already has the ability to regulate a licensee's failure to secure proper bonding amounts; regardless of when this occurred. The rule appears to add willful misrepresentation and though the Registrar does not wish to remove this language at this time or further clarify it, it continues to consider the intent of the language within the rule.

10) Whether the agency completed the course of action proposed in the previous Five-year-review Report
It appears the agency completed the course of action proposed by amending and increasing bonding requirements on licensees.

14) New action/date planned
Retain rule. No amendment drafted. If determined necessary, however, the agency will move to amend rule to clarify language noted in paragraph 6.

R4-9-113 Application Process

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5), A.R.S. § 32-1122, A.R.S. § 32-1124(A) & A.R.S. § 41-1073(A)

2) Objective of the rule
The purpose of this rule is to establish time frames for processing contractor license applications.

3) Effectiveness of the rule in achieving the objective
The rule is mostly effective in achieving its objective but can be improved by addressing notes in paragraphs 5 and 6.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement
The rule is mostly enforced but can be improved by reflecting more closely the reality of the administrative completeness review time frame and substantive review time frame. Currently, the administrative completeness review time frame allows for 40-days and the substantive time frame is 20-days. In reality, the administrative completeness review time frame is a relatively straightforward process, especially when compared to the substantive review, and requires far less time. The agency will seek to switch these time frames.

6) Clarity, conciseness, and understandability of the rule
This rule is mostly clear, concise and easily understandable. The rule offers much redundancy from statute and would likely read more concise if those redundancies were removed. The rule would also be clearer if sections explaining the return of a license application and withdrawal of a license application were consolidated in two separate sections with explanations for the consequences of fees provided in a more understandable manner.

14) New action/date planned
Retain rule. Amend to be a more clear, consistent and accurate reflection of the agency's enforcement policy. 7/1/2017

R4-9-115 Posting

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5) & A.R.S. § 32-1104(C)

2) Objective of the rule
The purpose of this rule is to establish a method of waiving part of the posting period as authorized in statute.

3) Effectiveness of the rule in achieving the objective
The rule is mostly effective in achieving its objective but can be improved by further clarifying as noted in paragraph 6. In addition, (C) is neither required by statute nor practiced and should be removed.

6) Clarity, conciseness, and understandability of the rule
The clarity of the rule can be improved by specifying the waiver may apply if all other personnel named on the application for the license have previously been posted for some other license, rather than "personnel of applicants who have previously undergone the 20-day posting period." The difference making clear that a waiver is possible even if the personnel were not listed on the same application having undergone a 20-day posting period. The rule may also be clearer in explaining (D) satisfies the posting requirement in ARS 32-1104(C).

14) New action/date planned
Retain rule. Amend to clarify language through reorganization of the content and by better clarifying enforcement as noted in paragraph 6. 7/1/2017

R4-9-116 License Renewal

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5) & A.R.S. § 32-1125

2) Objective of the rule
The objective of this rule is to provide criteria and assign responsibility for proper and timely license renewal.

3) Effectiveness of the rule in achieving the objective
The rule is ineffective as it is completely redundant to language provided in ARS 32-1125 and 32-1154 or a part of agency policy. Specifically, criteria listed in (A)(1) is checked by agency representatives as policy and requiring submission of the information is not necessary and (A)(2) is no longer required by statute. (B) is restated language from ARS 32-1125(B) and 32-1154(A). (C) and (D) are provided for within ARS 32-1125.

14) New Action/Planned Date
The Agency has not fully analyzed this rule and has allowed it to expire.

R4-9-117 Prior Record

2) Objective of the rule

The objective of the rule is to allow for consideration of a licensee's prior record for mitigation or aggravation purposes when determining the proper disciplinary action to be imposed.

3) Effectiveness of the rule in achieving the objective

The rule is fairly effective; however, the rule is too narrow in scope (i.e., it lists a limited number of items allowed to be considered.) By amending to language indicating the agency will consider facts in the current case, prior cases, and any documents regarding the contractor on file, the agency is more accurate in what it considers when determining prior record.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement

This rule is currently enforced but by addressing paragraph 3, the agency is more accurate in describing what is considered as prior record by denoting it considers all facts and documents allowed by law.

6) Clarity, conciseness, and understandability of the rule

The clarity of the rule may be improved by addressing noted issue in paragraph 3.

10) Whether the agency completed the course of action proposed in the previous Five-year-review Report

It appears the agency completed the course of action proposed by enabling consideration of prior record in administrative hearings.

14) New action/date planned

Retain rule. Amend to clarify language and improve effectiveness as noted in paragraph 3. 7/1/2017.

R4-9-120 Rehearing or Review of Decision

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5) & A.R.S. § 32-1156

2) Objective of the rule
The objective of the rule is to provide an opportunity for a rehearing or review of a final Order.

3) Effectiveness of the rule in achieving the objective
The rule is mostly effective but can be improved by addressing paragraphs 5, 6 and 7.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement
For the most part, the agency enforces this rule as written without any problems with enforcement. However, the following sections are not currently enforced:

- The agency does not enforce paragraph (B) which requires the motion to be filed with the agency. The agency currently accepts motions that are filed both with the Office of Administrative Hearings and the agency.
- The agency does not enforce this portion of paragraph (D) that provides, "After giving the parties notice and an opportunity to be heard, the Registrar of Contractors may grant a motion for rehearing for a reason not stated in the motion." The agency does not give the parties notice and an opportunity to be heard to submit a briefing for a reason not stated in the motion.
- The agency does not enforce paragraph (E) in that the agency does not set rehearings on its own motion.

The agency recommends paragraph (A) of the Rule be modified to provide for separate treatment of cases in which a hearing is held and those in which one is not held (e.g., defaults). The agency believes a "set aside" procedure consistent with Rule 55(c) using the standards of 59(a) of the Arizona Rules of Civil Procedure would be fairer to the complaining party in instances in which a default has been issued because the complaining party would not lose its rehearing rights. The word "decision" should be replaced with "decision and/or order".

The agency recommends that a new paragraph be added under paragraph (B) requiring the moving party to copy the motion to the opposing party, and the opposing party to copy the response to the moving party.

6) Clarity, conciseness, and understandability of the rule
Regarding paragraph (G), the rule should also provide that "appealable agency action" has the same meaning as that contained in A.R.S. § 41-1092.03.

There is confusion as to whether the grounds of Rule 60(c) and/or Rule 55(c) of the Arizona Rules of Civil Procedure apply.

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings
The agency has received verbal complaints, including concern from the state ombudsman, that it does not clearly notice parties of their opportunity to file for a rehearing or review of the decision.

10) Whether the agency completed the course of action proposed in the previous Five-year-review Report

It appears the agency attempted to address confusion as to what constitutes a "decision" but did not address the remaining items discussed in the 2011 5-year-rule review. The agency will continue to review R4-9-120 and make amendment as necessary in 2017.

14) New action/date planned

Retain rule. Amend to clarify language and improve enforcement and clarity as stated in paragraph 5 and 6. 7/1/2017

R4-9-121 Unauthorized Communications

2) Objective of the rule
The objective of this rule is to assist the registrar and its employees in avoiding the possibility of prejudice, real or apparent, in proceedings before the registrar.

3) Effectiveness of the rule in achieving the objective
The rule is not necessary and may be better applied as a policy.

5) Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement
The rule is enforced but done so as a policy.

6) Clarity, conciseness, and understandability of the rule
The rule is mostly clear with the exception of it being too broad by not specifying or limiting who considered a "decision-making employee."

7) Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the five-year review report, including letters, memoranda, reports, and written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the result of the litigation or administrative proceedings
The agency has received complaints regarding the unfairness of a complainant or respondent's inability to express concern over a case due to the rule.

14) New Action/Planned Date
The Agency has not fully analyzed this rule and has allowed it to expire.

R4-9-130 Schedule of Fees

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5) & A.R.S. § 32-1126

2) Objective of the rule
The objective of this rule is to establish a schedule of fees and other services.

3) Effectiveness of the rule in achieving the objective
The rule is effective.

14) New Action/Planned Date
Retain rule. No amendment planned.

R4-9-131 Assessment of Civil Penalties

1) General and specific statutes authorizing the rule
A.R.S. § 32-1104(A)(5) & A.R.S. § 32-1166(A)

2) Objective of the rule
The objective of this rule is to establish criteria to evaluate the gravity of a violation of Arizona Revised Statutes, Title 32, Chapter 10, or any rule or order of the Registrar. Weighing these criteria assists in determining the monetary amount of the civil penalty.

6) Clarity, conciseness, and understandability of the rule
Retain rule. The clarity of the rule can be improved by reorganizing content in a more direct and straightforward manner. With an amendment, the attempt will be made to break the "acts" into general considerations and specific considerations. Neither content nor application is expected to change, but the rule will be made clearer. 7/1/2017

Attachment D

Drafted Amendments to Title 4, Chapter 9 as Related to 5-Year-Rule Review

NOTE: The following language is understood not to be in proper formatting for rulemaking. Additionally, the language is not considered final by the Agency and may be altered prior to Docket Opening and Proposal of Rulemaking.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

(Authority: A.R.S. § 32-1101 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Section
R4-9-101. Definitions
R4-9-102. Commercial Contractor License Classifications and Scopes of Work
R4-9-103. Residential Contractor License Classifications and Scopes of Work
R4-9-104. Dual Contractor License Classifications and Scopes of Work
R4-9-105. Restricted License Classifications
R4-9-106. Examinations
R4-9-107. Classifying and Reclassifying Contractor Licenses
R4-9-108. Minimum Construction Standards
R4-9-109. Name of Licensee or Applicant
R4-9-110. Change of Legal Entity and Cancellation of License
R4-9-111. Repealed
R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits
R4-9-111. OPTING OUT OF DUAL LICENSE CLASSIFICATIONS
R4-9-113. Application Process
R4-9-114. Reserved
R4-9-115. Posting
R4-9-116. EXPIRED
R4-9-117. Prior Record
R4-9-118. PREHEARING DISCLOSURE
R4-9-119. Reserved
R4-9-120. Rehearing or Review of Decision
R4-9-121. EXPIRED
R4-9-122. Repealed
R4-9-123. Repealed
R4-9-124. Repealed
R4-9-125. Repealed
R4-9-126. Repealed
R4-9-127. Repealed
R4-9-128. Repealed
R4-9-129. Repealed
R4-9-130. Schedule of Fees
R4-9-131. Assessment of Civil Penalties

ARTICLE 1. GENERAL PROVISIONS

R4-9-101. Definitions

A. Appurtenances means all structures and improvements subordinate to a residence within residential property lines, excluding the residential structure itself, such as driveways, fences, patios, swimming pools, landscaping, sport courts, and gazebos.

B. Licensee means a business entity (sole proprietor, partnership, limited liability company or corporation) to which a license is issued and not the individuals comprising the ownership or management of the licensee, except for a sole proprietor. The license is held by the licensee and not the qualifying party.

Historical Note

Former Rule I. Former Section R4-9-01 repealed, new Section R4-9-01 adopted effective February 23, 1976 (Supp. 76-1). Amended effective November 21, 1979 (Supp. 79-6). Amended effective April 18, 1984 (Supp. 84-2). Former Section R4-9-01 amended effective July 9, 1987, and renumbered as Section R4-9-101 (Supp. 87-3). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-102. Commercial Contractor License Classifications and Scopes of Work

A. Commercial contractor license classifications. License classifications for commercial contractors are as follows:

ENGINEERING CONTRACTING
- A General Engineering
- A-4 Drilling
- A-5 Excavating, Grading and Oil Surfacing
- A-7 Piers and Foundations
- A-9 Swimming Pools
- A-11 Steel and Aluminum Erection

A-12 Sewers, Drains and Pipe Laying
A-14 Asphalt Paving
A-15 Seal Coating
A-16 Waterworks
A-17 Electrical and Transmission Lines
A-19 Swimming Pools, Including Solar

GENERAL COMMERCIAL CONTRACTING
B-1 General Commercial Contractor
B-2 General Small Commercial Contractor

SPECIALTY COMMERCIAL CONTRACTING
C-1 ACOUSTICAL SYSTEMS
C-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS
C-4 Boilers, Steamfitting and Process Piping
C-6 Swimming Pool Service and Repair
C-7 CARPENTRY
C-8 FLOOR COVERING
C-9 Concrete
C-10 DRYWALL
C-11 Electrical
C-12 ELEVATORS
C-14 FENCING
C-15 BLASTING
C-16 Fire Protection Systems
C-21 HARDSCAPING AND IRRIGATION SYSTEMS
C-24 ORNAMENTAL METALS
C-27 Lightweight Partitions
C-31 MASONRY
C-34 PAINTING AND WALL COVERING
C-36 PLASTERING
C-37 Plumbing
C-38 SIGNS
C-39 Air Conditioning and Refrigeration
C-40 INSULATION
C-41 SEPTIC TANKS AND SYSTEMS
C-42 ROOFING
C-45 SHEET METAL
C-48 CERAMIC, PLASTIC AND METAL TILE
C-49 Refrigeration
C-53 Water Well Drilling
C-54 WATER CONDITIONING EQUIPMENT
C-56 WELDING
C-57 WRECKING
C-58 Comfort Heating, Ventilating, Evaporative Cooling
C-60 FINISH CARPENTRY
C-61 CARPENTRY, REMODELING AND REPAIRS
C-63 APPLIANCES
C-65 GLAZING
C-67 LOW VOLTAGE COMMUNICATION SYSTEMS
C-70 REINFORCING BAR AND WIRE MESH
C-74 Boilers, Steamfitting and Process Piping, Including Solar
C-77 Plumbing Including Solar

C-78 Solar Plumbing Liquid Systems Only
C-79 Air Conditioning and Refrigeration, Including Solar

B. Commercial contracting scopes. The scope of work which may be done under the commercial contracting license classifications is as follows:

A- GENERAL ENGINEERING
This classification allows the licensee to construct or repair:

1. Fixed works
2. Streets
3. Roads
4. Power and utility plants
5. Dams
6. Hydroelectric plants
7. Sewage and waste disposal plants
8. Bridges
9. Tunnels
10. Overpasses
11. Public parks
12. PUBLIC RIGHT-OF-WAYS

Also included are the scopes of work allowed by the A-4 through A-19~~ and CR-2 through CR-80 classifications. This classification does not include work authorized by the B-1, B-2, B-, or B-3 scopes~~.

A-4 DRILLING
THIS CLASSIFICATION ALLOWS THE LICENSEE TO DRILL, INCLUDING ~~Drilling includes~~ horizontal and vertical drilling or boring, constructing, deepening, repairing, or abandoning wells; exploring for water, gas, and oil; and constructing dry wells, and monitor wells. Also included is the erection of rigs, derricks and related substructures, and installation, service and repair of pumps and pumping equipment.

A-5 EXCAVATING, GRADING AND OIL SURFACING

This classification allows the licensee to apply oil surfacing or other similar products; place shoring, casing, geotextiles or liners; and perform incidental blasting or drilling as required for the licensee to move, alter, or repair earthen materials by:

1. Digging
2. Trenching
3. Grading
4. Horizontal boring
5. Compacting
6. Filling

~~This license does not allow the licensee to excavate for water, gas or oil wells.~~

A-7 PIERS AND FOUNDATIONS
THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation of~~ piers and foundations using concrete, rebar, post tension and other materials common to the industry. Includes pile driving, excavation, forming and other techniques and equipment common to the industry.

A-9 SWIMMING POOLS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO CONSTRUCT ~~Construction, service,~~ and repair ~~of~~ swimming pools and spas, including water and gas service lines from point of service to pool equipment, wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, backflow prevention devices, waste lines, and other integral parts of a swimming pool or spa.

Also included is the installation of swimming pool accessories, covers, safety devices, and fencing for protective purposes, if in the original contract.

A-11 STEEL AND ALUMINUM ERECTION

~~Field fabrication, erection, repair, and alteration of architectural and structural steel and aluminum materials common to the industry, including field layout, cutting, assembly, and erection by welding, bolting, wire tying or riveting.~~

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL AND REPAIR ARCHITECTURAL AND STRUCTURAL STEEL AND ALUMINUM MATERIALS COMMON TO THE INDUSTRY. THIS CLASSIFICATION ALSO INCLUDES REINFORCING STEEL AND FIELD LAYOUT, CUTTING, ASSEMBLY, AND ERECTION BY WELDING, BOLTING, WIRE TYING OR RIVETING.

A-12 SEWERS, DRAINS AND PIPE LAYING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ any project involving sewer access holes, the laying of pipe for storm drains, water and gas lines, irrigation, and sewers. Includes connecting sewer collector lines to building drains and the installation of septic tanks, leach lines, dry wells, all necessary connections, liners and related excavating and backfilling.

A-14 ASPHALT PAVING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation of~~ asphalt paving, and all related fine grading on streets, highways, driveways, parking lots, tennis courts, running tracks, play areas, and gas station driveways and areas, using materials and accessories common to the industry. ~~Includes~~ ONLY PERMITTED AS IT PERTAINS TO THE LARGER SCOPE OF WORK, THE CLASSIFICATION ALSO PERMITS ~~the necessary~~ excavation and grading ~~only~~ for height adjustment of existing sewer access holes, storm drains, water valves, sewer cleanouts, and drain gates. Also included is the scope of work allowed by the A-15 Seal Coating Classification.

A-15 SEAL COATING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO APPLY ~~Application of~~ seal coating to asphalt paving surfaces. Includes repair of surface cracks and application of painted marking symbols.

A-16 WATERWORKS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM ALL ~~All~~ work necessary for the production and distribution of water including drilling well, setting casing and pump, related electrical work, related concrete work, excavation, piping for storage and distribution, storage tanks, related fencing, purification and chlorination equipment.

A-17 ELECTRICAL AND TRANSMISSION LINES

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ transmission lines on public right-of-ways, including erection of poles, guying systems, tower line erection, CELLULAR AND COMMUNICATION TOWERS, street lighting of all voltages, and all underground systems including ducts for signal, communication, and similar installations. Installing transformers, circuit breakers, capacitors, primary metering devices and other related equipment of all electrical construction is included.

~~All electrical systems of less than 600 volts on or inside a building are excluded.~~

A-19 SWIMMING POOLS, INCLUDING SOLAR

~~Construction, service, and repair of swimming pools and spas, with or without solar water heating devices, including water and gas service lines from point of service to pool equipment, wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, backflow prevention devices, waste lines and other integral parts of a swimming pool, spa and attached solar water heating device.~~

~~Also included are swimming pool accessories, covers, safety devices, and fencing for protective purposes, if in the original contract.~~

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM THE SAME SCOPE OF WORK PERMITTED BY THE A-9 BUT ALSO INCLUDES INSTALLATION AND REPAIR OF SOLAR HEATING DEVICES.

B-1 GENERAL COMMERCIAL CONTRACTOR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO CONSTRUCT, ALTER, Construction, alteration, and repair in connection with any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals, ~~chattels,~~ or movable property of any kind. This scope includes the supervision of all or any part of the above and includes the management, or direct or indirect supervision of any work performed.

Also included are the scopes of work allowed by the C~~R~~-2 through C~~R~~-80 license classifications~~. Work~~ WITH THE EXCEPTION OF WORK related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells, WHICH must be subcontracted to an appropriately licensed contractor. This classification does not include ENGINEERING OR RESIDENTIAL work ~~authorized by the A-, B-, or B-3 scopes~~.

B-2 GENERAL SMALL COMMERCIAL CONTRACTOR

FOR PROJECTS OF $2,000,000 OR LESS, THIS CLASSIFICATION ALLOWS FOR SMALL ~~Small~~ commercial construction in connection with any new structure or addition built, being built, or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind ~~for which the total amount paid to the licensee does not exceed $750,0002,000,000~~. This scope includes the supervision of all or any part of the above and includes the management or direct or indirect supervision of any work performed.

Also included are the scopes of work allowed by the C~~R~~-2 through C~~R~~-80 license classifications~~. Work~~ WITH THE EXCEPTION OF WORK related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells, WHICH must be subcontracted to an appropriately licensed contractor. This classification does not include ENGINEERING OR RESIDENTIAL work ~~authorized by the A-, B-, or B-3 scopes~~.

C-1 ACOUSTICAL SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR PRE-MANUFACTURED ACOUSTICAL CEILING AND WALL SYSTEMS.

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR ELECTRICAL OR MECHANICAL SYSTEMS.

C-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PLACE CONCRETE FOOTINGS AND CONCRETE SLABS AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. WINDOW AWNINGS
2. DOOR HOODS
3. FREESTANDING OR ATTACHED CANOPIES
4. CARPORT AND PATIO COVERS CONSTRUCTED OF METAL, FABRIC, FIBERGLASS, OR PLASTIC
5. SCREENED AND PANELED ENCLOSURES, WHICH ARE NOT INTENDED FOR USE AS HABITABLE SPACES, USING METAL PANELS, PLASTIC INSERTS, AND SCREEN DOORS. A MINIMUM OF 60% OF THE WALL AREA OF AN ENCLOSURE SHALL BE CONSTRUCTED OF SCREENING MATERIAL.
6. FASCIA PANELS
7. FLASHING AND SKIRTING
8. EXTERIOR, DETACHED METAL STORAGE UNITS

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR ELECTRICAL, PLUMBING, OR AIR CONDITIONING SYSTEMS.

C-4 BOILERS, STEAMFITTING AND PROCESS PIPING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ steam and hot water systems and boilers, including chimney connections, flues, refractories, burners, piping, fittings, valves, thermal insulation, and accessories; fuel and water lines from source of supply to boilers; process and specialty piping and related equipment; pneumatic and electrical controls.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-6 SWIMMING POOL SERVICE AND REPAIR

~~Service, replacement, and repair of swimming pools including all existing connections and equipment. Pool gas heaters and gas piping from meter to heater may be installed only if the existing line and gas supply are adequate.~~

~~Application of pool coatings to interior of pool in conjunction with minor repairs to pool tile, plaster, and decks.~~

~~Excluded are chlorine gas connections, connections to potable water, and electric connections beyond first readily accessible disconnect. This classification excludes a complete replacement of plaster or pebble pool interiors and decks.~~

THIS CLASSIFICATION ALLOWS THE LICENSEE TO REPLACE AND REPAIR COMMERCIAL POOLS AND ACCESSORIES INCLUDING ALL EXISTING CONNECTIONS AND EQUIPMENT. PLUMBING CONNECTIONS TO A POTABLE WATER SYSTEM, GAS LINES, GAS CHLORINE SYSTEMS, AND ELECTRICAL WORK BEYOND THE FIRST DISCONNECT MUST BE SUBCONTRACTED TO A PROPERLY LICENSED CONTRACTOR. THIS CLASSIFICATION DOES NOT INCLUDE A COMPLETE REPLACEMENT OF PLASTER OR PEBBLE POOL INTERIORS AND DECKS.

C-7 CARPENTRY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. ROUGH CARPENTRY
2. FINISH CARPENTRY
3. HARDWARE
4. MILLWORK
5. METAL STUDS
6. METAL DOORS OR DOOR FRAMES
7. WINDOWS

C-8 FLOOR COVERING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PREPARE A SURFACE AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR THE FOLLOWING FLOOR COVERING MATERIALS:

1. CARPET
2. FLOOR TILE
3. WOOD
4. LINOLEUM
5. VINYL
6. ASPHALT
7. RUBBER
8. CONCRETE COATINGS

C-9 CONCRETE

~~All work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry, including finishing, coloring, curing, repairing, testing, drilling, sawing, grinding, chipping, and grouting. Placing film barriers, sealing, and waterproofing are included.~~

~~Construction, centering, and assembling forms, molds, insulating concrete forms, slipforms, and pans.~~

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL AND REPAIR OF CONCRETE, CONCRETE PRODUCTS, AND ACCESSORIES COMMON TO THE INDUSTRY.

Trenching, excavating, backfilling, and grading in connection with concrete construction ARE ALSO INCLUDED.

~~Installation of embedded items essential to or comprising an integral part of the concrete or concrete construction, including reinforcing elements and accessories.~~

C-10 DRYWALL

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. GYPSUM WALL BOARD
2. CEILING GRID SYSTEMS AS SUPPORTING MEMBERS FOR GYPSUM DRYWALL
3. MOVABLE PARTITIONS
4. WALL BOARD TAPE AND TEXTURE
5. NON-LOAD BEARING, LIGHTWEIGHT, STEEL WALL PARTITIONS

C-11 ELECTRICAL

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ any wiring, related electrical material and equipment used in the generating, transmitting, or utilization of electrical energy less than 600 volts, including all overhead electrical wiring on public right-of-ways for signs and street decorations, and all underground electrical distribution systems of less than 600 volts serving private properties.

Installation, alteration, and repair on other than public right-of-ways of all outside, overhead, and underground electrical construction and all wiring in or on any building of less than 600 volts.

C-12 ELEVATORS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. ELEVATORS
2. DUMBWAITERS
3. ESCALATORS
4. MOVING WALKS AND RAMPS
5. STAGE AND ORCHESTRA LIFTS

C-14 FENCING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. METAL, WOOD, AND CEMENT BLOCK FENCING
2. AUTOMATIC GATES
3. FIRE ACCESS STROBES
4. HIGHWAY GUARD RAILS
5. CATTLE GUARDS
6. LOW VOLTAGE U.L. APPROVED ELECTRICAL FENCE PROTECTIVE DEVICES OF LESS THAN 25 VOLTS AND 100 WATTS

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR RETAINING WALLS.

C-15 BLASTING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO DRILL, BORE, MOVE EARTH, AND BUILD TEMPORARY SHELTERS OR BARRICADES, AS REQUIRED FOR THE LICENSEE'S USE OF EXPLOSIVES AND EXPLOSIVE DEVICES FOR:

1. EXCAVATION
2. DEMOLITION
3. GEOLOGICAL EXPLORATION
4. MINING
5. CONSTRUCTION RELATED BLASTING

C-16 FIRE PROTECTION SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ fire protection systems using water, steam, gas, or chemicals. Included is any required excavation, trenching, backfilling and grading, piping from structure, and connections to off-premise water supply adjacent to property involving a fire protection system.

Systems may include the following areas of work and related equipment: restaurant hood protection systems; fire pumps and drivers; pressure and storage tanks; all piping and valves; sprinkler heads and nozzles; and application of materials for the prevention of corrosion or freezing.

Also included are air compressors, air receivers, bottled inert gases, pressurized chemicals, manifolds, pneumatic, hydraulic, or electrical controls, low voltage signaling systems, control piping, and the flushing and testing of systems.

C-21 HARDSCAPING AND IRRIGATION SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO TREAT, CONDITION, PREPARE, AND INSTALL:

1. NON-LOADBEARING CONCRETE
2. UNCOVERED PATIOS, WALKWAYS, DRIVEWAYS MADE OF BRICK, STONE, PAVERS OR GRAVEL
3. WOODEN DECKS NO HIGHER THAN 29 INCHES ABOVE FINISH GRADE
4. DECORATIVE GARDEN WALLS UP TO SIX FEET FROM FINISH GRADE
5. FENCES AND SCREENS UP TO SIX FEET FROM FINISH GRADE
6. RETAINING WALLS UP TO THREE FEET FROM THE FINISH GRADE OF THE LOWER ELEVATION
7. FREE STANDING FIRE PITS, FIREPLACES, OR BARBEQUES – ELECTRIC, PLUMBING, AND GAS MUST BE SUBCONTRACTED TO A PROPERLY LICENSED CONTRACTOR
8. LOW VOLTAGE LANDSCAPE LIGHTING
9. WATER FEATURES THAT ARE NOT ATTACHED TO SWIMMING POOLS; INCLUDING ANY NECESSARY ELECTRICAL WIRING OF 120 VOLTS OR LESS, CONNECTION TO POTABLE WATER LINES, BACKFLOW PREVENTION DEVICES, HOSE BIBS, EXCAVATING, TRENCHING, BORING, BACKFILLING, OR GRADING
10. IRRIGATION SYSTEMS, INCLUDING ANY NECESSARY ELECTRICAL WIRING OF 120 VOLTS OR LESS, CONNECTION TO POTABLE WATER LINES, BACKFLOW PREVENTION DEVICES, HOSE BIBS, EXCAVATING, TRENCHING, BORING, BACKFILLING, OR GRADING

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL, CONTRACT FOR, OR SUBCONTRACT NEW ELECTRICAL SERVICE PANELS, GAS OR PLUMBING LINES, BLASTING, OUTDOOR KITCHENS, GAZEBOS, ROOM ADDITIONS, SWIMMING POOLS, POOL DECK COATINGS, BARBEQUES, CONCRETE DRIVEWAYS, LOAD BEARING WALLS, OR PERIMETER FENCING.

C-24 ORNAMENTAL METALS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO FABRICATE, INSTALL, OR REPAIR NON-STRUCTURAL ORNAMENTAL METAL, SUCH AS:

1. METAL FOLDING GATES
2. GUARD AND HAND RAILS
3. WROUGHT IRON FENCING AND GATES
4. WINDOW SHUTTERS AND GRILLES
5. ROOM DIVIDERS AND SHIELDS
6. METAL ACCESSORIES COMMON TO THE INDUSTRY

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL FIRE ESCAPES AND STAIRS.

C-27 LIGHTWEIGHT PARTITIONS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation of~~ lightweight (not to exceed 14 gauge) metal wall partitions, including suspended metal ceiling grid systems, as supporting members for the application of building materials such as: application and repair of gypsum plaster, cement, acoustical plaster, or a combination of materials and aggregates, that create a permanent coating; the application of such materials over

any surface which offers either a mechanical or suction type bond, sprayed, dashed, or troweled to the surface; surface sandblasting preparatory to plastering or stucco; installation of plastering accessories and lath products manufactured to provide a key or suction type bond for the support of various type plaster coatings; and installation and repair of gypsum wall board, pointing, accessories, taping, and texturing on structures both interior and exterior.

Upon the effective date of these rules, no new applications for the C-27 classification will be accepted and no new C-27 licenses will be issued.

C-31 MASONRY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO GROUT, CAULK, SAND BLAST, TUCKPOINT, MORTAR WASH, PARGE, CLEAN AND WELD REINFORCING STEEL AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. MASONRY
2. BRICK
3. CONCRETE BLOCK
4. INSULATING CONCRETE FORMS
5. ADOBE UNITS
6. STONE
7. MARBLE
8. SLATE
9. MORTAR-FREE MASONRY PRODUCTS

C-34 PAINTING AND WALL COVERING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM SURFACE PREPARATION, CAULKING, DRYWALL PATCHING, DRYWALL TAPING, SANDING, AND CLEANING AS REQUIRED FOR THE LICENSEE TO INSTALL, APPLY OR REPAIR:

1. WALLPAPER
2. WALL COVERING CLOTH
3. WALL COVERING VINYL
4. DECORATIVE TEXTURE
5. PAINT

C-36 PLASTERING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL LATHS, METAL STUDS, METAL GRID SYSTEMS, OR OTHER BASES AS REQUIRED FOR THE LICENSEE TO COAT SURFACES BY TROWEL OR SPRAY WITH COMBINATIONS OF:

1. SAND MIXTURES (E.G. STUCCO)
2. GYPSUM PLASTER
3. CEMENT
4. ACOUSTICAL PLASTER
5. SWIMMING POOL INTERIORS (EXCLUDING TILE)

C-37 PLUMBING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ all plumbing when performed solely within property lines and not on public easements or right-of-ways, except as hereinafter provided.

Installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks (excluding municipal or related water supply systems); venting and sanitary drainage systems for all fluid, semifluid, and organic wastes; septic tanks and leaching lines; roof leaders; lawn sprinklers; water conditioning equipment; piping; and equipment for swimming pools.

Also included are piping, fixtures, appliances, and pressure vessels for manufactured and natural gases, compressed air and vacuum systems, petroleum, fuel oil, nonpotable liquids, hot water heating, and hot water supply systems operating at pressures not exceeding 30 PSIG, or temperatures not exceeding 220° F; steam heating and steam supply systems not exceeding 15 PSIG operating pressure; gas or oil fired space heaters and furnaces, excluding duct work. Piping for water cooling systems, excluding the refrigerant piping and equipment. Testing and balancing of hydronics systems.

Sewer, gas, water lines, and connections from structure to the nearest point of public supply or disposal may cross public or private easements or be installed within private easements or right-of-ways. Pipe installed across public property may not be increased in size, or make any other connection between the point of exit from private property to the point of connection at public supply or disposal. These lines shall not be installed parallel to main lines in public easements or right-of-ways.

C-38 SIGNS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR POSTS, POLES, SUPPORTS, PAINT, AND ELECTRICAL WIRING AS REQUIRED FOR THE LICENSEE TO FABRICATE, INSTALL OR REPAIR:

1. SIGNS
2. DISPLAYS
3. FLAGPOLES

C-39 AIR CONDITIONING AND REFRIGERATION

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ refrigeration and evaporative cooling systems.

Installation, alteration, and repair of heating systems of "wet", "dry" or radiant type. "Wet" systems include steam or hot water boilers and coils, or baseboard convectors, and are limited to 30 PSIG operating pressure of 220° F for hot water and 15 PSIG operating pressure for steam. Dry systems include gas fired furnaces and space heaters.

Installation, alteration, and repair of ventilation systems includes duct work, air filtering devices, water treatment devices, pneumatic or electrical controls, and control piping. Thermal and acoustical insulation of refrigerant pipes and ductwork, vibration isolation materials and devices, liquid fuel piping and tanks, water and gas piping from service connection to the equipment it serves. Testing and balancing of refrigerant, cooling, heating circuits, and air handling systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-40 INSULATION

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL SUPPORTS, FASTENING SYSTEMS, ADHESIVES, MASTICS, OR PLASTICS AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. INSULATION MATERIALS, INCLUDING RADIANT BARRIERS
2. PREFORMED ARCHITECTURAL ACOUSTICAL MATERIALS
3. INSULATION PROTECTING MATERIALS

C-41 SEPTIC TANKS AND SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO EXCAVATE, INSTALL OR REPAIR PIPE, BACKFILL, AND COMPACT SOIL AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. SEPTIC TANKS
2. AEROBIC DIGESTERS
3. LEACHING FIELDS

C-42 ROOFING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO APPLY OR INSTALL WEATHERPROOFING (I.E. ASPHALTUM, PITCH, TAR, FELT, GLASS FABRIC, OR FLAX) OR ROOF ACCESSORIES (I.E. FLASHING, VALLEYS, GRAVEL STOPS, OR SHEET METAL) AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. ROOF TILE
2. SHINGLES
3. SHAKES
4. SLATE
5. METAL ROOFING SYSTEMS
6. URETHANE FOAM
7. ROOF INSULATION OR COATINGS ON OR ABOVE THE ROOF DECK

THIS CLASSIFICATION ALLOWS THE LICENSEE TO REPLACE UP TO THREE SHEETS (96 SQUARE FEET) OF PLYWOOD ON THE ROOF SUBSTRATE; AND INSTALL NEW OR REPLACE EXISTING SKYLIGHTS WHERE IT DOES NOT REQUIRE CHANGES TO THE ROOF FRAMING OR ROOF STRUCTURE.

C-45 SHEET METAL

THIS CLASSIFICATION ALLOWS THE LICENSEE TO CUT, FABRICATE, INSTALL OR REPAIR:

1. SHEET METAL
2. CORNICES
3. FLASHINGS
4. GUTTERS
5. LEADERS
6. PANS
7. KITCHEN EQUIPMENT
8. DUCT WORK
9. SKYLIGHTS

10. PATENTED CHIMNEYS
11. METAL FLUES
12. METAL ROOFING SYSTEMS

C-48 CERAMIC, PLASTIC AND METAL TILE

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PREPARE A SURFACE AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR THE FOLLOWING TILE PRODUCTS ON HORIZONTAL AND VERTICAL SURFACES:

1. CERAMIC
2. CLAY
3. FAIENCE
4. METAL
5. MOSAIC
6. GLASS MOSAIC
7. PAVER
8. PLASTIC
9. QUARRY AND STONE TILES SUCH AS MARBLE OR SLATE
10. TERRAZZO

INSTALLATION OF SHOWER DOORS AND TUB ENCLOSURES ARE INCLUDED WHEN A PART OF THE ORIGINAL CONTRACT.

C-49 REFRIGERATION

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ refrigeration equipment and systems used for processing, storage, and display of food products and other perishable commodities.

Includes commercial, industrial, and manufacturing processes requiring refrigeration excluding comfort air conditioning.

Systems may also include the following areas of work and related equipment: temperature, safety and capacity controls, thermal insulation, vibration isolation materials and devices; water treatment devices; construction and installation of walk-in refrigeration boxes, liquid fuel piping and tanks, water and gas piping from equipment to service connection; and testing and balancing of refrigeration equipment and systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-53 WATER WELL DRILLING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO DRILL ~~Drill~~ new water wells or deepen existing water wells by use of standard practices including the use of cable tools, compressed air percussion, rotary, air rotary, or reverse circulation rotary methods. Includes installing casing, gravel pack, perforating and sanitary seals. Repair existing wells by sand pumping, jetting, acidizing, swabbing, clean out, reperforating, swaging, installation of annealed lines, and the removal of debris.

Includes photographing interior of wells with appropriate equipment. Installation of jet and submersible pumps; electrical pump controls and wiring from pump equipment to first readily accessible disconnect; and water line to storage or pressure tank, not to exceed 50 linear feet. Use of a test pump to develop a new well, or repair an existing well, when provided in contract, is limited to 5 horsepower.

Installation of concrete pump bases not to exceed 50 square feet.

Installation of protective fencing when included in original contract.

C-54 WATER CONDITIONING EQUIPMENT

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM TRENCHING, BACKFILLING, AND GRADING; AND INSTALL AND REPAIR PIPING, FITTINGS, VALVES, CONCRETE SUPPORTS, AND ELECTRICAL CONTROL PANELS OF LESS THAN 25 VOLTS AND REQUIRED GROUNDING DEVICES; AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. WATER CONDITIONING EQUIPMENT
2. MISTING SYSTEMS
3. EXCHANGE TANKS
4. INDIRECT WASTE PIPE CARRYING BRINE,
   BACKWASH AND RINSE WATER TO THE POINT OF
   DISPOSAL

C-56 WELDING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO WELD METALS.

C-57 WRECKING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR TEMPORARY RAMPS, BARRICADES, AND PEDESTRIAN WALKWAYS AS REQUIRED FOR THE LICENSEE TO DEMOLISH,

DISMANTLE, OR REMOVE STRUCTURES NOT INTENDED FOR REUSE. THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO USE EXPLOSIVES.

C-58 COMFORT HEATING, VENTILATING, EVAPORATIVE COOLING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ warm air heating systems, gas fired furnaces and space heaters, ventilation and evaporative cooling units, or any combination of these.

Systems may include the following areas of work and related equipment; duct work, air filtering devices, pneumatic or electrical controls, control piping, thermal and acoustical insulation, vibration isolation materials and devices, liquid fuel piping and tanks, water and gas piping from service connection to equipment it serves. Testing and balancing of air handling systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-60 FINISH CARPENTRY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR MILLWORK SUCH AS:

1. CABINETS
2. COUNTER TOPS
3. CASE SASH
4. DOOR TRIM
5. METAL DOORS
6. AUTOMATIC DOOR CLOSERS, EXCLUDING OVERHEAD GARAGE DOORS
7. WOOD FLOORING

C-61 CARPENTRY, REMODELING AND REPAIRS

FOR PROJECTS OF $50,000 OR LESS INCLUDING LABOR AND MATERIALS, THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM ALL GENERAL REMODELING, ADDITIONS, REPLACEMENTS, AND REPAIRS TO EXISTING STRUCTURES.

WORK RELATED TO ELECTRICAL, PLUMBING, AIR CONDITIONING SYSTEMS, AND BOILERS MUST BE SUBCONTRACTED TO AN APPROPRIATELY LICENSED CONTRACTOR.

C-63 APPLIANCES

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL AND REPAIR APPLIANCES. THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR GAS, ELECTRICAL, OR PLUMBING LINES.

C-65 GLAZING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR WEATHERPROOFING, CAULKING, SEALANTS, AND ADHESIVES AS REQUIRED FOR THE LICENSEE TO ASSEMBLE, INSTALL OR REPAIR:

1. GLASS PRODUCTS
2. WINDOW FILM
3. WINDOW TREATMENTS, SUCH AS BLINDS OR SHUTTERS
4. STEEL AND ALUMINUM GLASS HOLDING MEMBERS

C-67 LOW VOLTAGE COMMUNICATION SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO BUILD ANTENNA TOWERS ON EXISTING STRUCTURES AS REQUIRED FOR THE LICENSEE TO INSTALL, SERVICE OR REPAIR:

1. ALARM SYSTEMS
2. TELEPHONE SYSTEMS
3. SOUND SYSTEMS
4. INTERCOMMUNICATION SYSTEMS
5. PUBLIC ADDRESSING SYSTEMS
6. TELEVISION OR VIDEO SYSTEMS
7. LOW VOLTAGE SIGNALING DEVICES
8. LOW VOLTAGE LANDSCAPE LIGHTING THAT DOES NOT EXCEED 91 VOLTS
9. MASTER AND PROGRAM CLOCKS (ONLY LOW VOLTAGE WIRING AND NEEDED EQUIPMENT)

C-70 REINFORCING BAR AND WIRE MESH

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. REINFORCING BAR
2. POST-TENSION
3. WIRE MESH

C-74 BOILERS, STEAMFITTING AND PROCESS PIPING, INCLUDING SOLAR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ steam and hot water systems and boilers including solar. Also included are chimney connections, flues, refractories, burners, piping, fittings, valves, thermal insulation and accessories; fuel and water lines from source of supply to boilers; process and specialty piping and related equipment; pneumatic and electrical controls.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-77 PLUMBING INCLUDING SOLAR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ all plumbing including solar, when performed solely within property lines and not on public easements or right-of-ways except as hereinafter provided.

Installation, alteration, and repair of all piping, fixtures and appliances related to water supply, including pressure vessels and tanks (excluding municipal or related water supply systems); venting and sanitary drainage systems for all fluid, semifluid, and organic wastes; septic tanks and leaching lines; roof leaders; lawn sprinkler systems; water conditioning equipment; piping and equipment for swimming pools.

Also included are piping, fixtures, appliances, and pressure vessels for manufactured and natural gases, compressed air and vacuum systems, petroleum, fuel oil, nonpotable liquids, hot water heating and hot water supply systems operating at pressures not exceeding 30 PSIG or temperatures not exceeding 220° F; steam heating and steam supply systems not exceeding 15 PSIG operating pressure; gas or oil fired space heaters and furnaces excluding duct work. Piping for water cooling systems, excluding the refrigerant piping and equipment. Testing and balancing of hydronics systems.

Sewer, gas, water lines, and connections from structure to the nearest point of public supply or disposal may cross public or private easements or be installed within private easements. Pipe installed across public property may not be increased in size or make any other connection between the point of exit from private property to point of connection at public supply or disposal. These lines shall not be installed parallel to main lines in public easements or right-of-ways.

C-78 SOLAR PLUMBING LIQUID SYSTEMS ONLY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ solar water heating systems operating at temperatures not exceeding 220° F, including thermosyphon, direct (open loop), and indirect (closed loop), but excludes air as a transfer medium.

Includes installation of collectors, storage and expansion tanks, heat exchangers, piping valves, pumps, sensors and low voltage controls which connect to existing plumbing and electrical stubouts at the water tank location.

Installation of solar water heating systems for swimming pools which tie into and operate from the conventional pool systems, but excludes all non-solar plumbing, electrical and mechanical systems and components.

Installation of backup and auxiliary heating systems only when such systems are included in the original contract and when such systems are an integral part of the solar collector or storage equipment.

C-79 AIR CONDITIONING AND REFRIGERATION INCLUDING SOLAR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, ~~Installation, alteration,~~ and repair ~~of~~ refrigeration and evaporative cooling systems, including solar.

Installation, alteration, and repair of heating systems of “wet”, “dry” or radiant type. “Wet” systems include steam, or hot water boilers and coils, or baseboard convectors and are limited to 30 PSIG operating pressure of 220° F for hot water and 15 PSIG operating pressure for steam. Dry systems include gas fired furnaces and space heaters.

Installation, alteration, and repair of ventilation systems.

Installation of these systems include duct work, air filtering devices, water treatment devices, pneumatic or electrical controls, and control piping. Thermal and acoustical insulation, vibration isolation materials and devices, liquid fuel piping and tanks, and water and gas piping from service connection to equipment it serves. Testing and balancing of refrigerant, cooling and heating circuits, and air handling systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

Historical Note

Former Rule 2. Amended effective May 20, 1975, Amended effective June 13, 1975, Amended effective August 8, 1975, Amended effective August 25, 1975 (Supp. 75-1). Amended effective January 9, 1976, subsection (B) of this Section R4-9-02 renumbered as Section R4-9-03 effective February 23, 1976 (Supp. 76-1). Amended effective October 14, 1977 (Supp. 77-5). Amended effective September 13, 1978 (Supp. 78-5). Amended by adding A-20 effective July 10, 1980; adding A-21 effective July 11, 1980; adding C-77 and C-78 effective July 28, 1980; adding C-74 and C-79 effective August 15, 1980; adding C-75 and C-80 effective August 19, 1980 (Supp. 80-4). Amended by adding A-19

effective September 5, 1980 (Supp. 80-5). Repealed effective April 18, 1984 (Supp. 84-2). New Section R4-9-02 adopted effective July 9, 1987, and renumbered as Section R4-9-102 (Supp. 87-3). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-103. Residential Contractor License Classifications and Scopes of Work

A. Residential contracting license classifications. License classifications for residential contractors are as follows:

GENERAL RESIDENTIAL CONTRACTING

- B- General Residential Contractor
- B-3 General Remodeling and Repair Contractor
- B-4 General Residential Engineering Contractor
  - B-4R Corrosion Control
  - B-4R Sport Court Accessories
  - B-4R Soil Stabilization
- B-5 General Swimming Pool Contractor
  - B-5R Swimming Pool Covers
  - B-5R Fiberglassing of Swimming Pools
  - B-5R Reservoir Linings and Covers
  - B-5R Factory Fabricated Pools and Accessories
- B-6 General Swimming Pool Contractor, Including Solar
- B-10 Pre-Manufactured Spas and Hot Tubs

SPECIALTY RESIDENTIAL CONTRACTING

- R-1 ACOUSTICAL SYSTEMS
- R-2 Excavating, Grading and Oil Surfacing
- R-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS
- R-4 Boilers, Including Solar
  - R-4R Boilers
- R-6 Swimming Pool Service and Repair
- R-7 CARPENTRY
- R-8 FLOOR COVERING
- R-9 Concrete
- R-10 DRYWALL
- R-11 Electrical
- R-12 ELEVATORS
- R-13 Asphalt Paving
- R-14 FENCING
- R-15 BLASTING
- R-16 Fire Protection
- R-17 Structural Steel and Aluminum
- R-21 HARSCAPING AND IRRIGATION SYSTEMS
- R-22 House Moving
- R-24 ORNAMENTAL METALS
- R-31 MASONRY
- R-34 PAINTING AND WALL COVERING
- R-36 PLASTERING
- R-37 Plumbing, Including Solar
  - R-37R Plumbing
  - R-37R Built-In Central Vacuum Systems
  - R-37R Kitchen and Bathroom Fixture Refinishing
  - R-37R Swimming Pool Plumbing and Equipment
  - R-37R Gas Piping

R-37R Sewers, Drains and Pipe Laying
R-37R Solar Plumbing Liquid Systems Only

R-38 SIGNS
R-39 Air Conditioning and Refrigeration, Including Solar
R-39R Air Conditioning and Refrigeration
R-39R Gas Refrigeration
R-39R Temperature Control Systems
R-39R Warm Air Heating, Evaporative Cooling and Ventilating
R-39R Evaporative Cooling and Ventilators
R-39R Pre-Coolers

R-40 INSULATION
R-41 SEPTIC TANKS AND SYSTEMS
R-42 ROOFING
R-45 SHEET METAL
R-48 CERAMIC, PLASTIC AND METAL TILE
R-53 Drilling
R-54 WATER CONDITIONING EQUIPMENT
R-56 WELDING
R-57 WRECKING
R-60 FINISH CARPENTRY
R-61 CARPENTRY, REMODELING AND REPAIRS
R-62 Minor Home Improvements
R-63 APPLIANCES
R-65 GLAZING
R-67 LOW VOLTAGE COMMUNICATION SYSTEMS
R-70 REINFORCING BAR AND WIRE MESH

B. RESIDENTIAL CONTRACTING SCOPES. The "R" designation after the license classification means that the licensee's scope of work is restricted to the description stated in the license title. The scope of work which may be done under the residential contracting license classifications is as follows:

B- GENERAL RESIDENTIAL CONTRACTOR
THIS CLASSIFICATION ALLOWS THE LICENSEE TO CONSTRUCT AND REPAIR ~~Construction of~~ all or any part of a residential structure or appurtenance. Also included are the scopes of work allowed by the B-3 and ~~C~~R-2 through ~~C~~R-80 license classifications~~. Work~~ WITH THE EXCEPTION OF WORK related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells, WHICH must be subcontracted to an appropriately licensed contractor. ~~This classification does not include work authorized by the A-, B-1, or B-2 scopes.~~

B-3 GENERAL REMODELING AND REPAIR CONTRACTOR
THIS CLASSIFICATION ALLOWS THE LICENSEE TO REMODEL AND REPAIR ~~Remodeling or repair of~~ an existing residential structure or appurtenance except for electrical, plumbing, mechanical, boilers, swimming pools, spas and water wells, which must be subcontracted to an appropriately licensed contractor. The scope of work allowed under the ~~C~~R-7 carpentry classification is included within this scope.
~~This classification does not include work authorized by the A-, B-1, or B-2 scopes.~~

B-4 GENERAL RESIDENTIAL ENGINEERING CONTRACTOR
THIS CLASSIFICATION ALLOWS THE LICENSEE TO CONSTRUCT ~~Construction~~ and repair ~~of~~ appurtenances to residential structures. Work related to electrical, plumbing, air conditioning systems, boilers, and water wells must be subcontracted to an appropriately licensed contractor. This scope includes the CR-21, B-5, and all B-4R subclassifications.

~~B-4R Corrosion Control~~
B-4R Sport Court Accessories
~~B-4R Soil Stabilization~~

Upon the effective date of these rules, no new applications for the B-4R license classifications will be accepted and no new B-4R licenses will be issued.

B-5 GENERAL SWIMMING POOL CONTRACTOR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO CONSTRUCT ~~Construction~~ and repair ~~of~~ swimming pools and spas. Installation of code-required pool barriers around the swimming pool or spa and installation of utilities from the point of service to the pool equipment. Construction of other structures or appurtenances is excluded. This scope includes all B-5R subclassifications.

B-5R	Swimming Pool Covers
B-5R	Fiberglassing of Swimming Pools
B-5R	Reservoir Linings & Covers
B-5R	Factory Fabricated Pools & Accessories

Upon the effective date of these rules, no new applications for the B-5R classifications will be accepted and no new B-5R licenses will be issued.

B-6 GENERAL SWIMMING POOL CONTRACTOR, INCLUDING SOLAR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM THE SAME SCOPE OF WORK PERMITTED BY THE ~~The scope of work allowed in this classification is the same as~~ B-5 (including all B-5R subclassifications) ~~with the inclusion of~~ BUT ALSO INCLUDES INSTALLATION AND REPAIR OF solar heating devices.

B-10 PREMANUFACTURED SPAS AND HOT TUBS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO CONSTRUCT ~~Construction~~ and repair ~~of~~ spas and hot tubs. Installation of code-required pool barriers around the spa or hot tub and installation of utilities from the point of service to the spa equipment are included.

R-1 ACOUSTICAL SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR PRE-MANUFACTURED ACOUSTICAL CEILING AND WALL SYSTEMS.

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR ELECTRICAL OR MECHANICAL SYSTEMS.

R-2 EXCAVATING, GRADING AND OILSURFACING

This classification allows the licensee to apply oil surfacing or other similar products and place shoring, casing, geotextiles or liners as required for the licensee to move, alter, or repair earthen materials by:

1. Digging
2. Trenching
3. Grading
4. Horizontal boring
5. Compacting
6. Filling

R-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PLACE CONCRETE FOOTINGS AND CONCRETE SLABS AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. WINDOW AWNINGS
2. DOOR HOODS
3. FREESTANDING OR ATTACHED CANOPIES
4. CARPORT AND PATIO COVERS CONSTRUCTED OF METAL, FABRIC, FIBERGLASS, OR PLASTIC
5. SCREENED AND PANELED ENCLOSURES, WHICH ARE NOT INTENDED FOR USE AS HABITABLE SPACES, USING METAL PANELS, PLASTIC INSERTS, AND SCREEN DOORS. A MINIMUM OF 60% OF THE WALL AREA OF AN ENCLOSURE SHALL BE CONSTRUCTED OF SCREENING MATERIAL.
6. FASCIA PANELS
7. FLASHING AND SKIRTING
8. EXTERIOR, DETACHED METAL STORAGE UNITS

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR ELECTRICAL, PLUMBING, OR AIR CONDITIONING SYSTEMS.

R-4 ~~BOILERS, INCLUDING SOLAR~~

BOILERS, STEAMFITTING AND PROCESS PIPING

~~Installation and repair of steam and hot water boilers.~~

~~If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel. This scope includes the C-4R subclassification.~~

~~R-4R Boilers~~

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL, ALTER, AND REPAIR STEAM AND HOT WATER SYSTEMS AND BOILERS, INCLUDING CHIMNEY CONNECTIONS, FLUES, REFRACTORIES, BURNERS, PIPING, FITTINGS, VALVES, THERMAL INSULATION, AND ACCESSORIES; FUEL AND WATER LINES FROM SOURCE OF SUPPLY TO BOILERS; PROCESS AND SPECIALTY PIPING AND RELATED EQUIPMENT; PNEUMATIC AND ELECTRICAL CONTROLS.

IF NECESSARY, A NEW CIRCUIT MAY BE ADDED TO THE EXISTING SERVICE PANEL OR SUB-PANEL. EXCLUDED IS THE INSTALLATION OF A NEW SERVICE PANEL OR SUB-PANEL.

R-6 SWIMMING POOL SERVICE AND REPAIR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO SERVICE AND PERFORM MINOR REPAIR ~~Service and minor repair~~ of residential pools and accessories, excluding plumbing connections to a potable water system, gas lines, gas chlorine systems, and electrical work beyond the first disconnect. This classification does not include a complete replacement of plaster or pebble pool interiors and decks.

R-7 CARPENTRY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. ROUGH CARPENTRY
2. FINISH CARPENTRY
3. HARDWARE
4. MILLWORK
5. METAL STUDS
6. METAL DOORS OR DOOR FRAMES
7. WINDOWS

R-8 FLOOR COVERING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PREPARE A SURFACE AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR THE FOLLOWING FLOOR COVERING MATERIALS:

1. CARPET
2. FLOOR TILE
3. WOOD
4. LINOLEUM
5. VINYL
6. ASPHALT
7. RUBBER
8. CONCRETE COATINGS

R-9 CONCRETE

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ concrete, concrete products, and accessories common to the industry.

R-10 DRYWALL

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. GYPSUM WALL BOARD
2. CEILING GRID SYSTEMS AS SUPPORTING MEMBERS FOR GYPSUM DRYWALL
3. MOVABLE PARTITIONS
4. WALL BOARD TAPE AND TEXTURE
5. NON-LOAD BEARING, LIGHTWEIGHT, STEEL WALL PARTITIONS

R-11 ELECTRICAL

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ electrical systems.

R-12 ELEVATORS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. ELEVATORS
2. DUMBWAITERS

3. ESCALATORS
4. MOVING WALKS AND RAMPS
5. STAGE AND ORCHESTRA LIFTS

R-13 ASPHALT PAVING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ paved areas using materials and methods common to the industry, including asphalt curbs, concrete bumper curbs, headers, and striping.

R-14 FENCING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. METAL, WOOD, AND CEMENT BLOCK FENCING
2. AUTOMATIC GATES
3. FIRE ACCESS STROBES
4. CATTLE GUARDS
5. LOW VOLTAGE U.L. APPROVED ELECTRICAL
   FENCE PROTECTIVE DEVICES OF LESS THAN 25 VOLTS AND 100 WATTS

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR RETAINING WALLS.

R-15 BLASTING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO DRILL, BORE, MOVE EARTH, AND BUILD TEMPORARY SHELTERS OR BARRICADES, AS REQUIRED FOR THE LICENSEE'S USE OF EXPLOSIVES AND EXPLOSIVE DEVICES FOR:

1. EXCAVATION
2. DEMOLITION
3. CONSTRUCTION RELATED BLASTING

R-16 FIRE PROTECTION SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of approved types of~~ fire prevention and fire protection systems including all mechanical apparatus, devices, piping, ~~low-voltage signaling systems,~~ and equipment common to the fire protection industry. INSTALLATION AND REPAIR OF LOW VOLTAGE SIGNALING SYSTEMS ARE ALSO PERMITTED BY THE R-16 BUT ~~Installation~~ INSTALLATION AND REPAIR of all other electrical devices, apparatus, and wiring must be subcontracted to a properly licensed contractor.

R-17 STRUCTURAL STEEL AND ALUMINUM

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ architectural and structural ~~shapes and members~~ STEEL AND ALUMINUM MATERIALS common to the industry~~, including reinforcing steel which may be used as structural members for buildings, equipment, and structures~~. THIS CLASSIFICATION ALSO INCLUDES REINFORCING STEEL AND FIELD LAYOUT, CUTTING, ASSEMBLY, AND ERECTION BY WELDING, BOLTING, WIRE TYING OR RIVETING.

R-21 HARDSCAPING AND IRRIGATION SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO TREAT, CONDITION, PREPARE, AND INSTALL:

1. NON-LOADBEARING CONCRETE
2. UNCOVERED PATIOS, WALKWAYS, DRIVEWAYS MADE OF BRICK, STONE, PAVERS OR GRAVEL
3. WOODEN DECKS NO HIGHER THAN 29 INCHES ABOVE FINISH GRADE
4. DECORATIVE GARDEN WALLS UP TO SIX FEET FROM FINISH GRADE
5. FENCES AND SCREENS UP TO SIX FEET FROM FINISH GRADE
6. RETAINING WALLS UP TO THREE FEET FROM THE FINISH GRADE OF THE LOWER ELEVATION
7. FREE STANDING FIRE PITS, FIREPLACES, OR BARBEQUES – ELECTRIC, PLUMBING, AND GAS MUST BE SUBCONTRACTED TO A PROPERLY LICENSED CONTRACTOR
8. LOW VOLTAGE LANDSCAPE LIGHTING
9. WATER FEATURES THAT ARE NOT ATTACHED TO SWIMMING POOLS; INCLUDING ANY NECESSARY: CONNECTION TO POTABLE WATER LINES, BACKFLOW PREVENTION DEVICES, HOSE BIBS, EXCAVATING, TRENCHING, BORING, BACKFILLING, OR GRADING
10. IRRIGATION SYSTEMS, INCLUDING ANY NECESSARY: CONNECTION TO POTABLE WATER LINES, BACKFLOW PREVENTION DEVICES, HOSE BIBS, EXCAVATING, TRENCHING, BORING, BACKFILLING, OR GRADING
11. RESIDENTIAL OUTDOOR MISTING SYSTEMS. FREESTANDING OR ATTACHED TO EXISTING APPURTENANCE, NOT MORE THAN 1000 PSI.
12. FREE STANDING AND UNCOVERED OUTDOOR KITCHENS – ELECTRIC, PLUMBING, AND GAS MUST BE SUBCONTRACTED TO A PROPERLY LICENSED CONTRACTOR

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR, CONTRACT FOR, OR SUBCONTRACT NEW ELECTRICAL SERVICE PANELS, BLASTING, COVERED OUTDOOR KITCHENS, GAZEBOS, ROOM ADDITIONS, SWIMMING POOLS, POOL DECK COATINGS, CONCRETE DRIVEWAYS, LOAD BEARING WALLS, OR PERIMETER FENCING.

R-22 HOUSE MOVING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO DISCONNECT ~~Disconnection of~~ utilities ~~is permitted~~, but connection of utilities and construction of foundations are not PERMITTED.

R-24 ORNAMENTAL METALS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO FABRICATE, INSTALL, OR REPAIR NON-STRUCTURAL ORNAMENTAL METAL, SUCH AS:

1. METAL FOLDING GATES
2. GUARD AND HAND RAILS
3. WROUGHT IRON FENCING AND GATES
4. WINDOW SHUTTERS AND GRILLES
5. ROOM DIVIDERS AND SHIELDS
6. METAL ACCESSORIES COMMON TO THE INDUSTRY

THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL FIRE ESCAPES AND STAIRS.

R-31 MASONRY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO GROUT, CAULK, SAND BLAST, TUCKPOINT, MORTAR WASH, PARGE, CLEAN AND WELD REINFORCING STEEL AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. MASONRY
2. BRICK
3. CONCRETE BLOCK
4. INSULATING CONCRETE FORMS
5. ADOBE UNITS
6. STONE
7. MARBLE
8. SLATE
9. MORTAR-FREE MASONRY PRODUCTS

R-34 PAINTING AND WALL COVERING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM SURFACE PREPARATION, CAULKING, DRYWALL PATCHING, DRYWALL TAPING, SANDING, AND CLEANING AS REQUIRED FOR THE LICENSEE TO INSTALL, APPLY OR REPAIR:

1. WALLPAPER
2. WALL COVERING CLOTH
3. WALL COVERING VINYL
4. DECORATIVE TEXTURE
5. PAINT

R-36 PLASTERING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL LATHS, METAL STUDS, METAL GRID SYSTEMS, OR OTHER BASES AS REQUIRED FOR THE LICENSEE TO COAT SURFACES BY TROWEL OR SPRAY WITH COMBINATIONS OF:

1. SAND MIXTURES (E.G. STUCCO)
2. GYPSUM PLASTER
3. CEMENT
4. ACOUSTICAL PLASTER
5. SWIMMING POOL INTERIORS (EXCLUDING TILE)

R-37 PLUMBING, INCLUDING SOLAR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ water and gas piping systems, fire protection AS IT RELATES TO WATER SPRINKLER systems, and sewage treatment systems. Included are all fixtures, vents, and devices common to the industry, as well as solar applications. This scope includes all ~~C-37R~~ R-37R subclassifications.

R-37R	Plumbing
R-37R	Built-in Central Vacuum Systems
R-37R	Kitchen and Bathroom Fixture Refinishing
R-37R	Swimming Pool Plumbing and Equipment

R-37R Gas Piping

R-37R Sewers, Drains and Pipe Laying

R-37R Solar Plumbing Liquid Systems Only

Upon the effective date of these rules, no new applications for the R-37R Built-in Central Vacuum Systems, Kitchen and Bathroom Fixture Refinishing, Swimming Pool Plumbing and Equipment, Gas Piping, Sewers, Drains and Pipe Laying, and Solar Plumbing Liquid Systems Only license classifications will be accepted and no new R-37R licenses in these classifications will be issued.

R-38 SIGNS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR POSTS, POLES, SUPPORTS, PAINT, AND ELECTRICAL WIRING AS REQUIRED FOR THE LICENSEE TO FABRICATE, INSTALL OR REPAIR:

1. SIGNS
2. DISPLAYS
3. FLAGPOLES

R-39 AIR CONDITIONING AND REFRIGERATION, INCLUDING SOLAR

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ comfort air conditioning systems, including refrigeration, evaporative cooling, ventilating, and heating with or without solar equipment. Installation and repair of machinery, units, accessories, refrigerator rooms, and insulated refrigerator spaces, and controls in refrigerators.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel. This scope includes all ~~C-39R~~ R-39R subclassifications.

R-39R Air Conditioning and Refrigeration

R-39R Gas Refrigeration

R-39R Temperature Control Systems

R-39R Warm Air Heating, Evaporative Cooling and Ventilating

R-39R Evaporative Cooling and Ventilators

R-39R Pre-Coolers

Upon the effective date of these rules, no new applications for the R-39R Gas Refrigeration, Temperature Control Systems, Warm Air Heating, Evaporative Cooling and Ventilating, Evaporative Cooling and Ventilators, and Pre-Coolers license classifications will be accepted and no new R-39R licenses in these classifications will be issued.

R-40 INSULATION

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL SUPPORTS, FASTENING SYSTEMS, ADHESIVES, MASTICS, OR PLASTICS AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. INSULATION MATERIALS, INCLUDING RADIANT BARRIERS
2. PREFORMED ARCHITECTURAL ACOUSTICAL MATERIALS
3. INSULATION PROTECTING MATERIALS

R-41 SEPTIC TANKS AND SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO EXCAVATE, INSTALL OR REPAIR PIPE, BACKFILL, AND COMPACT SOIL AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. SEPTIC TANKS
2. AEROBIC DIGESTERS
3. LEACHING FIELDS

R-42 ROOFING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO APPLY OR INSTALL WEATHERPROOFING (I.E. ASPHALTUM, PITCH, TAR, FELT, GLASS FABRIC, OR FLAX) OR ROOF ACCESSORIES (I.E. FLASHING, VALLEYS, GRAVEL STOPS, OR SHEET METAL) AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. ROOF TILE
2. SHINGLES
3. SHAKES
4. SLATE
5. METAL ROOFING SYSTEMS
6. URETHANE FOAM
7. ROOF INSULATION OR COATINGS ON OR ABOVE THE ROOF DECK

THIS CLASSIFICATION ALLOWS THE LICENSEE TO REPLACE UP TO THREE SHEETS (96 SQUARE FEET) OF PLYWOOD ON THE ROOF SUBSTRATE; AND INSTALL NEW OR REPLACE EXISTING SKYLIGHTS WHERE IT DOES NOT REQUIRE CHANGES TO THE ROOF FRAMING OR ROOF STRUCTURE.

R-45 SHEET METAL

THIS CLASSIFICATION ALLOWS THE LICENSEE TO CUT, FABRICATE, INSTALL OR REPAIR:

1. SHEET METAL
2. CORNICES
3. FLASHINGS
4. GUTTERS
5. LEADERS
6. PANS
7. KITCHEN EQUIPMENT
8. DUCT WORK
9. SKYLIGHTS
10. PATENTED CHIMNEYS
11. METAL FLUES
12. METAL ROOFING SYSTEMS

R-48 CERAMIC, PLASTIC AND METAL TILE

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PREPARE A SURFACE AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR THE FOLLOWING TILE PRODUCTS ON HORIZONTAL AND VERTICAL SURFACES:

1. CERAMIC
2. CLAY
3. FAIENCE
4. METAL
5. MOSAIC
6. GLASS MOSAIC
7. PAVER
8. PLASTIC
9. QUARRY AND STONE TILES SUCH AS MARBLE OR SLATE
10. TERRAZZO

INSTALLATION OF SHOWER DOORS AND TUB ENCLOSURES ARE INCLUDED WHEN A PART OF THE ORIGINAL CONTRACT.

R-53 DRILLING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL ~~Installation~~ and repair ~~of~~ wells, including test boring, exploratory drilling and all materials and devices common to the industry.

R-54 WATER CONDITIONING EQUIPMENT

THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM TRENCHING, BACKFILLING, AND GRADING; AND INSTALL AND REPAIR PIPING, FITTINGS, VALVES, CONCRETE SUPPORTS, AND ELECTRICAL CONTROL PANELS OF LESS THAN 25 VOLTS AND REQUIRED GROUNDING DEVICES; AS REQUIRED FOR THE LICENSEE TO INSTALL OR REPAIR:

1. WATER CONDITIONING EQUIPMENT
2. MISTING SYSTEMS
3. EXCHANGE TANKS
4. INDIRECT WASTE PIPE CARRYING BRINE,
   BACKWASH AND RINSE WATER TO THE POINT OF
   DISPOSAL

R-56 WELDING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO WELD METALS.

R-57 WRECKING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR TEMPORARY RAMPS, BARRICADES, AND PEDESTRIAN WALKWAYS AS REQUIRED FOR THE LICENSEE TO DEMOLISH, DISMANTLE, OR REMOVE STRUCTURES NOT INTENDED FOR REUSE. THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO USE EXPLOSIVES.

R-60 FINISH CARPENTRY

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR MILLWORK SUCH AS:

1. CABINETS
2. COUNTER TOPS
3. CASE SASH
4. DOOR TRIM

5. METAL DOORS
6. AUTOMATIC DOOR CLOSERS, EXCLUDING OVERHEAD GARAGE DOORS
7. WOOD FLOORING

R-61 CARPENTRY, REMODELING AND REPAIRS

FOR PROJECTS OF $50,000 OR LESS INCLUDING LABOR AND MATERIALS, THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM ALL GENERAL REMODELING, ADDITIONS, REPLACEMENTS, AND REPAIRS TO EXISTING STRUCTURES.

WORK RELATED TO ELECTRICAL, PLUMBING, AIR CONDITIONING SYSTEMS, AND BOILERS MUST BE SUBCONTRACTED TO AN APPROPRIATELY LICENSED CONTRACTOR.

R-62 MINOR HOME IMPROVEMENTS

FOR PROJECTS OF $5,000 OR LESS INCLUDING LABOR AND MATERIALS, THIS CLASSIFICATION ALLOWS THE LICENSEE TO PERFORM ~~Remodeling~~ REMODELING, repairs, and improvements to existing structures or appurtenances ~~not to exceed $5,000 for labor and materials per project per dwelling or appurtenance~~. The minor home improvement contractor shall not perform structural work to any existing structures or appurtenances, including load bearing masonry or concrete work (with the exception of on-grade flat work), and load bearing carpentry work (with the exception of patio or porch covers). ~~All electrical, plumbing, air conditioning, heating, boiler, and roofing work shall be performed by an appropriately licensed contractor.~~

WORK RELATED TO ELECTRICAL, PLUMBING, AIR CONDITIONING SYSTEMS, AND BOILERS MUST BE SUBCONTRACTED TO AN APPROPRIATELY LICENSED CONTRACTOR.

R-63 APPLIANCES

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL AND REPAIR APPLIANCES. THIS CLASSIFICATION DOES NOT ALLOW THE LICENSEE TO INSTALL OR REPAIR GAS, ELECTRICAL, OR PLUMBING LINES.

R-65 GLAZING

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR WEATHERPROOFING, CAULKING, SEALANTS, AND ADHESIVES AS REQUIRED FOR THE LICENSEE TO ASSEMBLE, INSTALL OR REPAIR:

1. GLASS PRODUCTS
2. WINDOW FILM
3. WINDOW TREATMENTS, SUCH AS BLINDS OR SHUTTERS
4. STEEL AND ALUMINUM GLASS HOLDING MEMBERS

R-67 LOW VOLTAGE COMMUNICATION SYSTEMS

THIS CLASSIFICATION ALLOWS THE LICENSEE TO BUILD ANTENNA TOWERS ON EXISTING STRUCTURES AS REQUIRED FOR THE LICENSEE TO INSTALL, SERVICE OR REPAIR:

1. ALARM SYSTEMS
2. TELEPHONE SYSTEMS
3. SOUND SYSTEMS
4. INTERCOMMUNICATION SYSTEMS
5. PUBLIC ADDRESSING SYSTEMS
6. TELEVISION OR VIDEO SYSTEMS
7. LOW VOLTAGE SIGNALING DEVICES
8. LOW VOLTAGE LANDSCAPE LIGHTING THAT DOES NOT EXCEED 91 VOLTS
9. MASTER AND PROGRAM CLOCKS (ONLY LOW VOLTAGE WIRING AND NEEDED EQUIPMENT)

R-70 REINFORCING BAR AND WIRE MESH

THIS CLASSIFICATION ALLOWS THE LICENSEE TO INSTALL OR REPAIR:

1. REINFORCING BAR
2. POST-TENSION
3. WIRE MESH

Historical Note

Former Rule 3. Amended effective May 20, 1975, Amended effective June 13, 1975, Amended effective August 8, 1975, Amended effective August 25, 1975 (Supp. 75-1). Amended effective January 9, 1976, subsection (B) of former Section R4-9-02 renumbered as Section R4-9-03 effective February 23, 1976 (Supp. 76-1). Amended effective March 11, 1976 (Supp. 76-2). Correction, Historical Note for Supp. 76-1 should read former Section R4-9-03 repealed, new Section R4-9-03 adopted effective February 23, 1975 (Supp. 76-4). Amended effective November 23, 1976 (Supp. 76-5). Amended effective October 14, 1977 (Supp. 77-5). C-4 and C-37 amended effective December 9, 1977 (Supp. 77-6). Correction, Historical Note for Supp. 76-4 should read former Section R4-9-03 repealed, new Section R4-9-03

adopted effective February 23, 1976 (Supp. 78-1). Amended effective September 13, 1978 (Supp. 78-5). Amended effective April 2, 1979 (Supp. 79-2). Amended effective November 21, 1979 (Supp. 79-6). Amended effective July 10, 1980 (Supp. 80-4). Amended effective July 11, 1980 (Supp. 80-4). Amended effective July 28, 1980 (Supp. 80-4). Amending effective August 15, 1980 (Supp. 80-4). Amended effective August 19, 1980 (Supp. 80-4). Amended effective September 5, 1980 (Supp. 80-5). Amended effective April 18, 1984 (Supp. 84-2). Former Section R4-9-03 renumbered without change as Section R4-9-103 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective January 20, 1998 (Supp. 98-1). Amended to correct typographical errors (Supp. 99-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-104. Dual Contractor License Classifications and Scopes of Work

A. Dual license contracting classifications. License classifications for dual contractors are as follows:

GENERAL DUAL ENGINEERING CONTRACTING

KA-	Dual Engineering
KA-5	Dual Swimming Pool Contractor
KA-6	Dual Swimming Pool Contractor Including Solar
KE-	(As restricted by Registrar)

GENERAL DUAL LICENSE CONTRACTING

KB-1	Dual Building Contractor
KB-2	Dual Residential and Small Commercial
KO-	(As restricted by Registrar)

SPECIALTY DUAL LICENSE CONTRACTING

CR-1	Acoustical Systems
CR-2	Excavating, Grading and Oil Surfacing
CR-3	Awnings, Canopies, Carports and Patio Covers
CR-4	Boilers, Steamfitting and Process Piping
CR-5	(As restricted by Registrar)
CR-6	Swimming Pool Service and Repair
CR-7	Carpentry
CR-8	Floor Covering
CR-9	Concrete
CR-10	Drywall
CR-11	Electrical
CR-12	Elevators
CR-14	Fencing
CR-15	Blasting
CR-16	Fire Protection Systems
CR-17	Steel and Aluminum Erection
CR-21	~~Landscaping~~ HARDSCAPING and Irrigation Systems
CR-24	Ornamental Metals
CR-29	Machinery (As restricted by Registrar)
CR-31	Masonry
CR-34	Painting and Wall Covering
CR-36	Plastering
CR-37	Plumbing
CR-38	Signs
CR-39	Air Conditioning, Refrigeration and Heating
CR-40	Insulation
CR-41	Septic Tanks and Systems
CR-42	Roofing
CR-45	Sheet Metal
CR-48	Ceramic, Plastic and Metal Tile

CR-53	Water Well Drilling
CR-54	Water Conditioning Equipment
CR-56	Welding
CR-57	Wrecking
CR-58	Comfort Heating, Ventilating, Evaporative Cooling
CR-60	Finish Carpentry
CR-61	Carpentry, Remodeling and Repairs
~~CR-62~~	~~Reinforcing Bar and Wire Mesh~~
CR-63	Appliances
CR-65	Glazing
CR-66	Seal Coating
CR-67	Low Voltage Communication Systems
CR-69	Asphalt Paving
CR-70	REINFORCING BAR AND WIRE MESH
CR-74	Boilers, Steamfitting and Process Piping, including Solar
CR-77	Plumbing including Solar
CR-78	Solar Plumbing Liquid Systems Only
CR-79	Air Conditioning and Refrigeration including Solar
CR-80	Sewers, Drains and Pipe Laying

B. Dual license contracting scopes. The scope of work which may be done under the dual license contracting classifications allow a contractor to combine commercial and residential contracting licenses in one license. These classifications are as follows:

KA- DUAL ENGINEERING
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A- General Engineering and the B-4 General Residential Engineering licenses.

KA-5 DUAL SWIMMING POOL CONTRACTOR
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-9 Swimming Pools and the residential B-5 General Swimming Pool licenses.

KA-6 DUAL SWIMMING POOL CONTRACTOR INCLUDING SOLAR
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-19 Swimming Pools, Including Solar and the residential B-6 General Swimming Pools, Including Solar licenses.

KE- (AS RESTRICTED BY REGISTRAR)

KB-1 DUAL BUILDING CONTRACTOR
This classification allows the SCOPES ~~scope~~ of work permitted by the B-1 General Commercial Contractor and the B- General Residential Contractor licenses.

KB-2 DUAL RESIDENTIAL AND SMALL COMMERCIAL
This classification allows the SCOPES ~~scope~~ of work permitted by the B-2 General Small Commercial and the B- General Residential Contractor licenses.

KO- (AS RESTRICTED BY REGISTRAR)

CR-1 ACOUSTICAL SYSTEMS
~~This classification allows the licensee to install or repair pre-manufactured acoustical ceiling and wall systems.~~

~~This classification does not allow the licensee to install or repair electrical or mechanical systems.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-1 ACOUSTICAL SYSTEMS AND THE RESIDENTIAL R-1 ACOUSTICAL SYSTEMS LICENSES.

CR-2 EXCAVATING, GRADING AND OIL SURFACING
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-5 Excavating, Grading, and Oil Surfacing and the residential R-2 Excavating, Grading, and Oil Surfacing licenses.

CR-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS

~~This classification allows the licensee to place concrete footings and concrete slabs as required for the licensee to install or repair:~~

~~1. Window awnings~~

~~2. Door hoods~~

~~3. Freestanding or attached canopies~~

~~4. Carport and patio covers constructed of metal, fabric, fiberglass, or plastic~~

~~5. Screened and paneled enclosures, which are not intended for use as habitable spaces, using metal panels, plastic inserts, and screen doors. A minimum of 60% of the wall area of an enclosure shall be constructed of screening material.~~

~~6. Fascia panels~~

~~7. Flashing and skirting~~

~~8. Exterior, detached metal storage units~~

~~This classification does not allow the licensee to install or repair electrical, plumbing, or air conditioning systems.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS AND THE RESIDENTIAL R-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS LICENSES.

CR-4 BOILERS, STEAMFITTING AND PROCESS PIPING

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-4 Boilers, Steamfitting and Process Piping and the residential ~~R-4 Boilers~~ R-4 BOILERS, STEAMFITTING AND PROCESS PIPING licenses.

CR-5 (AS RESTRICTED BY REGISTRAR)

CR-6 SWIMMING POOL SERVICE AND REPAIR

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-6 Swimming Pool Service and Repair and the residential R-6 Swimming Pool Service and Repair licenses.

CR-7 CARPENTRY

~~This classification allows the licensee to install or repair:~~

~~1. Rough carpentry~~

~~2. Finish carpentry~~

~~3. Hardware~~

~~4. Millwork~~

~~5. Metal studs~~

~~6. Metal doors or door frames~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-7 CARPENTRY AND THE RESIDENTIAL R-7 CARPENTRY LICENSES.

CR-8 FLOOR COVERING

~~This classification allows the licensee to prepare a surface as required for the licensee to install or repair the following floor covering materials:~~

~~1. Carpet~~

~~2. Floor tile~~

~~3. Wood~~

~~4. Linoleum~~

~~5. Vinyl~~

~~6. Asphalt~~

~~7. Rubber~~

~~8. Concrete coatings~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-8 FLOOR COVERING AND THE RESIDENTIAL R-8 FLOOR COVERING LICENSES.

CR-9 CONCRETE

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-9 Concrete and the residential R-9 Concrete licenses.

CR-10 DRYWALL

~~This classification allows the licensee to install or repair:~~
~~1. Gypsum wall board~~
~~2. Ceiling grid systems as supporting members for gypsum drywall~~
~~3. Movable partitions~~
~~4. Wall board tape and texture~~
~~5. Non-load bearing, lightweight, steel wall partitions~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-10 DRYWALL AND THE RESIDENTIAL R-10 DRYWALL LICENSES.

CR-11 ELECTRICAL

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-11 Electrical and residential R-11 Electrical licenses.

CR-12 ELEVATORS

~~This classification allows the licensee to install or repair:~~
~~1. Elevators~~
~~2. Dumbwaiters~~
~~3. Escalators~~
~~4. Moving walks and ramps~~
~~5. Stage and orchestra lifts~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-12 ELEVATORS AND THE RESIDENTIAL R-12 ELEVATORS LICENSES.

CR-14 FENCING

~~This classification allows the licensee to install or repair:~~
~~1. Metal, wood, and cement block fencing~~
~~2. Automatic gates~~
~~3. Fire access strobes~~
~~4. Highway guard rails~~
~~5. Cattle guards~~
~~6. Low voltage U.L. approved electrical fence protective devices of less than 25 volts and 100 watts~~

~~This classification does not allow the licensee to install or repair retaining walls.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-14 FENCING AND THE RESIDENTIAL R-14 FENCING LICENSES.

CR-15 BLASTING

~~This classification allows the licensee to drill, bore, move earth, and build temporary shelters or barricades, as required for the licensee's use of explosives and explosive devices for:~~
~~1. Excavation~~
~~2. Demolition~~
~~3. Geological exploration~~
~~4. Mining~~
~~5. Construction related blasting~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-15 BLASTING AND THE RESIDENTIAL R-15 BLASTING LICENSES.

CR-16 FIRE PROTECTION SYSTEMS

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-16 Fire Protection Systems and the residential R-16 Fire Protection licenses.

CR-17 STEEL AND ALUMINUM ERECTION

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-11 Steel and Aluminum Erection and the residential R-17 Structural Steel and Aluminum licenses.

CR-21 ~~LANDSCAPING~~ HARDSCAPING AND IRRIGATION SYSTEMS

~~This classification allows the licensee to treat, condition, prepare, and install:~~
~~1. Topsoil~~
~~2. Plants and decorative vegetation~~
~~3. Non-loadbearing concrete~~
~~4. Uncovered patios, walkways, driveways made of brick, stone, pavers or gravel~~
~~5. Wooden decks no higher than 29 inches above finish grade~~

~~6. Decorative garden walls up to six feet from finish grade~~
~~7. Fences and screens up to six feet from finish grade~~
~~8. Retaining walls up to three feet from the finish grade of the lower elevation~~
~~9. Wood-burning fire pit no higher than 16 inches above finish grade~~
~~10. Low voltage landscape lighting~~
~~11. Water features that are not attached to swimming pools; including any necessary: electrical wiring of 120 volts or less, connection to potable water lines, backflow prevention devices, hose bibs, excavating, trenching, boring, backfilling, or grading~~
~~12. Irrigation systems, including any necessary: electrical wiring of 120 volts or less, connection to potable water lines, backflow prevention devices, hose bibs, excavating, trenching, boring, backfilling, or grading~~

~~This classification does not allow the licensee to install, contract for, or subcontract new electrical service panels, gas or plumbing lines, blasting, outdoor kitchens, gazebos, room additions, swimming pools, pool deck coatings, barbeques, concrete driveways, load bearing walls, or perimeter fencing.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-21 HARDSCAPING AND IRRIGATION SYSTEMS AND THE RESIDENTIAL R-21 HARDSCAPING AND IRRIGATION SYSTEMS LICENSES.

CR-24 ORNAMENTAL METALS

~~This classification allows the licensee to fabricate, install, or repair non-structural ornamental metal, such as:~~
~~1. Metal folding gates~~
~~2. Guard and hand rails~~
~~3. Wrought iron fencing and gates~~
~~4. Window shutters and grilles~~
~~5. Room dividers and shields~~
~~6. Metal accessories common to the industry~~

~~This classification does not allow the licensee to install fire escapes and stairs.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-24 ORNAMENTAL METALS AND THE RESIDENTIAL R-24 ORNAMENTAL METALS LICENSES.

CR-29 MACHINERY (AS RESTRICTED BY THE REGISTRAR)

CR-31 MASONRY

~~This classification allows the licensee to grout, caulk, sand-blast, tuckpoint, mortar-wash, parge, clean and weld reinforcing steel as required for the licensee to install or repair:~~
~~1. Masonry~~
~~2. Brick~~
~~3. Concrete block~~
~~4. Insulating concrete forms~~
~~5. Adobe units~~
~~6. Stone~~
~~7. Marble~~
~~8. Slate~~
~~9. Mortar-free masonry products~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-31 MASONRY AND THE RESIDENTIAL R-31 MASONRY LICENSES.

CR-34 PAINTING AND WALL COVERING

~~This classification allows the licensee to perform surface preparation, caulking, drywall patching, drywall taping, sanding, and cleaning as required for the licensee to install, apply or repair:~~
~~1. Wallpaper~~
~~2. Wall covering cloth~~
~~3. Wall covering vinyl~~

~~4. Decorative texture~~
~~5. Paint~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-34 PAINTING AND WALL COVERING AND THE RESIDENTIAL R-34 PAINTING AND WALL COVERING LICENSES.

CR-36 PLASTERING

~~This classification allows the licensee to install laths, metal studs, metal grid systems, or other bases as required for the licensee to coat surfaces by trowel or spray with combinations of:~~

~~1. Sand mixtures (e.g. stucco)~~
~~2. Gypsum plaster~~
~~3. Cement~~
~~4. Acoustical plaster~~
~~5. Swimming pool interiors (excluding tile)~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-36 PLASTERING AND THE RESIDENTIAL R-36 PLASTERING LICENSES.

CR-37 PLUMBING

This classification allows the scope of work permitted by the commercial C-37 Plumbing and the residential R-37R Plumbing licenses.

CR-38 SIGNS

~~This classification allows the licensee to install or repair posts, poles, supports, paint, and electrical wiring as required for the licensee to fabricate, install or repair:~~

~~1. Signs~~
~~2. Displays~~
~~3. Flagpoles~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-38 SIGNS AND THE RESIDENTIAL R-38 SIGNS LICENSES.

CR-39 AIR CONDITIONING AND REFRIGERATION

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-39 Air Conditioning and Refrigeration and the residential R-39R Air Conditioning and Refrigeration licenses.

CR-40 INSULATION

~~This classification allows the licensee to install supports, fastening systems, adhesives, mastics, or plastics as required for the licensee to install or repair:~~

~~1. Insulation materials~~
~~2. Preformed architectural acoustical materials~~
~~3. Insulation protecting materials~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-40 INSULATION AND THE RESIDENTIAL R-40 INSULATION LICENSES.

CR-41 SEPTIC TANKS AND SYSTEMS

~~This classification allows the licensee to excavate, install or repair pipe, backfill, and compact soil as required for the licensee to install or repair:~~

~~1. Septic tanks~~
~~2. Aerobic digesters~~
~~3. Leaching fields~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-56 WELDING AND THE RESIDENTIAL R-56 WELDING LICENSES.

CR-42 ROOFING

~~This classification allows the licensee to apply or install weatherproofing (i.e. asphaltum, pitch, tar, felt, glass fabric, or flax) or roof accessories (i.e. flashing, valleys, gravel stops, or sheet metal) as required for the licensee to install or repair:~~

~~1. Roof tile~~
~~2. Shingles~~
~~3. Shakes~~
~~4. Slate~~
~~5. Metal roofing systems~~
~~6. Urethane foam~~
~~7. Roof insulation or coatings on or above the roof deck~~

~~This classification allows the licensee to replace up to three sheets (96 square feet) of plywood on the roof substrate; and install new or replace existing skylights where it does not require changes to the roof framing or roof structure.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-42 ROOFING AND THE RESIDENTIAL R-42 ROOFING LICENSES.

CR-45 SHEET METAL

~~This classification allows the licensee to cut, fabricate, install or repair:~~

~~1. Sheet metal~~
~~2. Cornices~~
~~3. Flashings~~
~~4. Gutters~~
~~5. Leaders~~
~~6. Pans~~
~~7. Kitchen equipment~~
~~8. Duct work~~
~~9. Skylights~~
~~10. Patented chimneys~~
~~11. Metal flues~~
~~12. Metal roofing systems~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-45 SHEET METAL AND THE RESIDENTIAL R-45 SHEET METAL LICENSES.

CR-48 CERAMIC, PLASTIC AND METAL TILE

~~This classification allows the licensee to prepare a surface as required for the licensee to install or repair the following tile products on horizontal and vertical surfaces:~~

~~1. Ceramic~~
~~2. Clay~~
~~3. Faience~~
~~4. Metal~~
~~5. Mosaic~~
~~6. Glass mosaic~~
~~7. Paver~~
~~8. Plastic~~
~~9. Quarry~~
~~10. Stone tiles such as marble or slate~~
~~11. Terrazzo~~

~~Installation of shower doors and tub enclosures are included when a part of the original contract.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-48 CERAMIC, PLASTIC AND METAL TILE AND THE RESIDENTIAL R-48 CERAMIC, PLASTIC AND METAL TILE LICENSES.

CR-53 WATER WELL DRILLING

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-53 Water Well Drilling and the residential R-53 Drilling licenses.

CR-54 WATER CONDITIONING EQUIPMENT

~~This classification allows the licensee to perform trenching, backfilling, and grading; and install and repair piping, fittings, valves, concrete supports, and electrical control panels of less than 25 volts and required grounding devices; as required for the licensee to install or repair:~~

~~1. Water conditioning equipment~~
~~2. Misting systems~~
~~3. Exchange tanks~~
~~4. Indirect waste pipe carrying brine, backwash and rinse water to the point of disposal~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-54 WATER CONDITIONING EQUIPMENT AND THE RESIDENTIAL R-54 WATER CONDITIONING EQUIPMENT LICENSES.

CR-56 WELDING

~~This classification allows the licensee to weld metals.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-56 WELDING AND THE RESIDENTIAL R-56 WELDING LICENSES.

CR-57 WRECKING

~~This classification allows the licensee to install or repair temporary ramps, barricades, and pedestrian walkways as required for the licensee to demolish, dismantle, or remove structures not intended for reuse. This classification does not allow the licensee to use explosives.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-57 WRECKING AND THE RESIDENTIAL R-57 WRECKING LICENSES.

CR-58 COMFORT HEATING, VENTILATING, EVAPORATIVE COOLING

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-58 Comfort Heating, Ventilating, Evaporative Cooling and the residential R-39R Warm Air Heating, Evaporative Cooling, and Ventilating licenses.

CR-60 FINISH CARPENTRY

~~This classification allows the licensee to install or repair millwork such as:~~

~~1. Cabinets~~
~~2. Counter tops~~
~~3. Case sash~~
~~4. Door trim~~
~~5. Metal doors~~
~~6. Automatic door closers~~
~~7. Wood flooring~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-60 FINISH CARPENTRY AND THE RESIDENTIAL R-60 FINISH CARPENTRY LICENSES.

CR-61 CARPENTRY, REMODELING AND REPAIRS

~~For projects of $50,000 or less, this classification allows the licensee, on existing structures, to install or repair:~~

~~1. Rough carpentry~~
~~2. Finish carpentry~~
~~3. Roofing~~
~~4. Hardware~~
~~5. Millwork~~
~~6. Metal studs~~
~~7. Metal doors or door frames~~

~~Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-61 CARPENTRY, REMODELING AND REPAIRS AND THE RESIDENTIAL R-61 CARPENTRY, REMODELING AND REPAIRS LICENSES.

CR-62 REINFORCING BAR AND WIRE MESH

This classification allows the licensee to install or repair:

1. Reinforcing bar
2. Post-tension
3. Wire mesh

UPON THE EFFECTIVE DATE OF THESE RULES, NO NEW APPLICATIONS FOR THE CR-62 REINFORCING BAR AND WIRE MESH LICENSE CLASSIFICATIONS WILL BE ACCEPTED, NO NEW CR-62 LICENSES WILL BE ISSUED, AND EXISTING CR-62 LICENSES WILL BE RECLASSIFIED AS CR-70 REINFORCING BAR AND WIRE MESH.

CR-63 APPLIANCES

~~This classification allows the licensee to install and repair appliances. This classification does not allow the licensee to install or repair gas, electrical, or plumbing lines.~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-63 APPLIANCES AND THE RESIDENTIAL R-63 APPLIANCES LICENSES.

CR-65 GLAZING

~~This classification allows the licensee to install or repair weatherproofing, caulking, sealants, and adhesives as required for the licensee to assemble, install or repair:~~

~~1. Glass products~~
~~2. Window film~~
~~3. Window treatments~~
~~4. Steel and aluminum glass holding members~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-65 GLAZING AND THE RESIDENTIAL R-65 GLAZING LICENSES.

CR-66 SEAL COATING

This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-15 Seal Coating and the residential R-13 Asphalt Paving licenses.

CR-67 LOW VOLTAGE COMMUNICATION SYSTEMS

~~This classification allows the licensee to build antenna towers on existing structures as required for the licensee to install, service or repair:~~

~~1. Alarm systems~~
~~2. Telephone systems~~
~~3. Sound systems~~
~~4. Intercommunication systems~~
~~5. Public addressing systems~~
~~6. Television or video systems~~
~~7. Low voltage signaling devices~~
~~8. Low voltage landscape lighting that does not exceed 91 volts~~
~~9. Master and program clocks (only low voltage wiring and needed equipment)~~

THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-67 LOW VOLTAGE COMMUNICATION SYSTEMS AND THE RESIDENTIAL R-67 LOW VOLTAGE COMMUNICATION SYSTEMS LICENSES.

CR-69 ASPHALT PAVING
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-14 Asphalt Paving and the residential R-13 Asphalt Paving licenses.

CR-70 REINFORCING BAR AND WIRE MESH
THIS CLASSIFICATION ALLOWS THE SCOPES OF WORK PERMITTED BY THE COMMERCIAL C-70 REINFORCING BAR AND WIRE MESH AND THE RESIDENTIAL R-70 REINFORCING BAR AND WIRE MESH LICENSES.

CR-74 BOILERS, STEAMFITTING AND PROCESS PIPING, INCLUDING SOLAR
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-74 Boilers, Steamfitting and Process Piping, Including Solar and the residential R-4 Boilers Including Solar licenses.

CR-77 PLUMBING INCLUDING SOLAR
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-77 Plumbing Including Solar and the residential R-37 Plumbing, Including Solar licenses.

CR-78 SOLAR PLUMBING LIQUID SYSTEMS ONLY
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-78 Solar Plumbing Liquid Systems Only and the residential R-37R Solar Plumbing Liquid Systems Only licenses.

CR-79 AIR CONDITIONING AND REFRIGERATION INCLUDING SOLAR
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial C-79 Air Conditioning and Refrigeration Including Solar and the residential R-39 Air Conditioning and Refrigeration Including Solar licenses.

CR-80 SEWERS, DRAINS AND PIPE LAYING
This classification allows the SCOPES ~~scope~~ of work permitted by the commercial A-12 Sewers, Drains, and Pipe Laying and the residential R-37R Sewers, Drains and Pipe Laying licenses.

Historical Note

Former Section R4-9-04 repealed, new Section R4-9-04 adopted effective February 23, 1976 (Supp. 76-1). Amended effective April 18, 1984 (Supp. 84-2). Amended subsection (A) effective July 9, 1987 (Supp. 87-3). Former Section R4-9-04 renumbered as Section R4-9-104 (Supp. 87-3). Former Section R4-9-104 renumbered to R4-9-105 and amended; new Section R4-9-104 adopted effective January 20, 1998 (Supp. 98-1). Amended to correct typographical errors (Supp. 99-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-105. Restricted License Classifications

A. A restricted license is a specialty or general license that confines the scope of allowable contracting work to a specialized area of construction which the Registrar of Contractors grants on a case-by-case basis. The restricted licenses classifications are KE, KO, CR-5 or CR-29. The Registrar assigns a restricted license classification based upon the nature and complexity of the work, the degree of unusual expertise involved and the applicability of existing classifications to the specialized area of construction.

B. When applying for a restricted license classification an applicant, if requested, shall submit to the Registrar the following:
1. A detailed statement of the type and scope of contracting work that the applicant proposes to perform.
2. Any brochures, catalogs, photographs, diagrams, or other material, which the applicant has, that will further clarify the scope of the work that the applicant proposes to perform.

C. The Registrar shall determine the classification of the restricted license and notify the applicant of the classification. The applicant must then apply for the restricted license according to the Registrar of Contractor's application process in accordance with A.R.S. § 32-1122.

D. A contractor issued a restricted license shall confine the contractor's activities to the field and scope of operations as described in the license classification.

Historical Note

Former Section R4-9-05 repealed, new Section R4-9-05 adopted effective February 23, 1976 (Supp. 76-1). Amended effective July 9, 1987 (Supp. 87-3). Former Section R4-9-05 renumbered without change as Section R4-9-105 (Supp 87-3). Former Section R4-9-105 renumbered to R4-9-106 and amended; new Section R4-9-105 renumbered from R4-9-104 and amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-106. Examinations

~~**A.** Examinations are given weekly or more often as prescribed by the Registrar or the contracted vendor.~~

~~**B.** The applicant's qualifying party must take and pass the appropriate examination with a passing grade of at least 70% for each examination taken.~~

~~**C.** A person is allowed to retake a failed examination subject to the following limitations:~~

~~1. Waiting 30 calendar days after a first failed attempt,~~

~~2. Waiting 30 calendar days after a second failed attempt, and~~

~~3. Waiting 180 calendar days after the third and any subsequent failed attempts.~~

~~**D.** Pursuant to A.R.S. §§ 32-1122(A)(4) and 32-1122(F) the Registrar may decide a trade exam is not required where the qualifying party has been the qualifying party within the preceding five years for a license in good standing in the same classification in this state, or a classification the Registrar deems comparable in another state.~~

A. **DEFINITIONS.**

1. *BUSINESS MANAGEMENT EXAMINATION*. THE TERM "BUSINESS MANAGEMENT EXAMINATION" MEANS THE EXAMINATION REQUIRED IN A.R.S. § 32-1122(F)(2) ADDRESSING THE QUALIFYING PARTY'S GENERAL KNOWLEDGE OF THE CONTRACTING BUSINESS IN ARIZONA. THE BUSINESS MANAGEMENT EXAMINATION ADDRESSES THE QUALIFYING PARTY'S GENERAL KNOWLEDGE OF:
   - A. THE BUILDING, SAFETY, HEALTH, AND LIEN LAWS OF THE STATE;
   - B. ADMINISTRATIVE PRINCIPLES OF THE CONTRACTING BUSINESS;
   - C. THE RULES ADOPTED BY THE REGISTRAR; AND
   - D. ANY OTHER MATTERS DEEMED APPROPRIATE BY THE REGISTRAR TO DETERMINE THAT THE QUALIFYING PARTY MEETS THE REQUIREMENTS OF CHAPTER 10, TITLE 32.
2. *TRADE EXAMINATION*. THE TERM "TRADE EXAMINATION" MEANS THE EXAMINATION REQUIRED IN A.R.S. § 32-1122(F)(2) ADDRESSING THE QUALIFYING PARTY'S KNOWLEDGE OF THE PARTICULAR KIND OF WORK PERFORMED IN THE LICENSE CLASSIFICATION. THE TRADE EXAMINATION ADDRESSES THE QUALIFYING PARTY'S:
   - A. QUALIFICATION IN THE KIND OF WORK FOR WHICH THE APPLICANT PROPOSES TO CONTRACT;
   - B. KNOWLEDGE AND UNDERSTANDING OF CONSTRUCTION PLANS AND SPECIFICATIONS APPLICABLE TO THE PARTICULAR INDUSTRY OR CRAFT;
   - C. KNOWLEDGE AND UNDERSTANDING OF THE STANDARDS OF CONSTRUCTION WORK AND TECHNIQUES AND PRACTICES IN THE PARTICULAR INDUSTRY OR CRAFT;
   - D. GENERAL UNDERSTANDING OF OTHER RELATED CONSTRUCTION TRADES; AND
   - E. ANY OTHER MATTERS DEEMED APPROPRIATE BY THE REGISTRAR TO DETERMINE THAT THE QUALIFYING PARTY MEETS THE REQUIREMENTS OF CHAPTER 10, TITLE 32.

B. **FREQUENCY OF EXAMINATIONS.** THE REGISTRAR, OR A CONTRACTED PRIVATE TESTING SERVICE, MUST ADMINISTER BUSINESS EXAMINATIONS AND TRADE EXAMINATIONS AT LEAST ONCE A WEEK.

C. **PASSING GRADE.** ON EACH REQUIRED EXAMINATION, THE QUALIFYING PARTY MUST RECEIVE A GRADE OF AT LEAST 70%.

D. **RETAKING EXAMINATIONS AFTER FAILURE.** IF THE QUALIFYING PARTY FAILS TO RECEIVE A GRADE OF AT LEAST 70% ON AN EXAMINATION, THE QUALIFYING PARTY MAY RETAKE THE EXAMINATION ONLY AFTER WAITING:

1. 30 CALENDAR DAYS FROM THE FIRST FAILURE;
2. 30 CALENDAR DAYS FROM THE SECOND FAILURE; AND
3. 180 DAYS FROM ANY OTHER FAILURE.

E. WAIVER OF THE EXAMINATION REQUIREMENT IN A.R.S. § 32-1122.

1. WAIVER OF EXAMINATION REQUIREMENT FOR A QUALIFYING PARTY FROM ANOTHER STATE.
   - A. *AUTHORITY FOR WAIVER.* IN ADDITION TO THE REGISTRAR'S AUTHORITY IN A.R.S. § 32-1122(F) TO WAIVE THE EXAMINATION REQUIREMENT FOR A QUALIFYING PARTY IN THIS STATE, THE REGISTRAR MAY WAIVE THE EXAMINATION REQUIREMENT FOR THE QUALIFYING PARTY FOR A LICENSEE IN ANOTHER STATE.
   - B. *CONDITIONS FOR WAIVER.* THE REGISTRAR MAY WAIVE THE EXAMINATION REQUIREMENT IF RECORDS REFLECT THAT THE QUALIFYING PARTY IS CURRENTLY OR HAS PREVIOUSLY BEEN A QUALIFYING PARTY FOR A LICENSEE IN THE OTHER STATE IN THE SAME CLASSIFICATION, OR IN A COMPARABLE CLASSIFICATION, WITHIN THE PRECEDING FIVE YEARS.
2. *EXTENT OF WAIVER OF EXAMINATION REQUIREMENT FOR ANY QUALIFYING PARTY.*

A. *WAIVER OF TRADE EXAMINATION PERMITTED.* THE REGISTRAR MAY WAIVE THE EXAMINATION REQUIREMENT WITH RESPECT TO THE TRADE EXAMINATION IF:
   1. A QUALIFYING PARTY FOR A LICENSEE IN THIS STATE MEETS THE CONDITIONS FOR WAIVER IN A.R.S. § 32-1122(F); OR
   2. A QUALIFYING PARTY FOR A LICENSE IN ANOTHER STATE MEETS THE CONDITIONS FOR WAIVER IN SECTION (E)(1) OF THIS RULE.

Historical Note

New Section R4-9-106 renumbered from R4-9-105 and amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-107. Classifying and Reclassifying Contractor Licenses

A. In accordance with A.R.S § 32-1105 and 32-1122, the Registrar may establish, add to, take away from, or eliminate license classifications.

B. Where a license classification is eliminated, but the Registrar determines a comparable license classification remains, the Registrar shall reclassify the eliminated licenses with the remaining license classification.

C. The following license reclassifications WERE ~~are~~ effective July 1, 2014.

Prior License	**New License**
A-3 Blasting	CR-15 Blasting
C-15 Blasting	
A-21 Landscaping and Irrigation Systems	CR-21 Landscaping and Irrigation Systems
L-26 Landscaping	
L-44 Irrigation Systems	
C-21 Landscaping and Irrigation Systems	
C-21R Landscaping	
C-21R Irrigation Systems	
K-26 Landscaping	
K-44 Irrigation Systems	
AE (As Restricted by the Registrar)	KE (As Restricted by the Registrar)
BE (As Restricted by the Registrar)	KO (As Restricted by the Registrar)
L-1 Acoustical Systems	CR-1 Acoustical Systems
C-1 Acoustical Systems	
L-3 Awnings, Canopies, Carports and Patio Covers	CR-3 Awnings, Canopies, Carports and Patio Covers
C-3 Awnings and Canopies	
L-5 (As Restricted by the Registrar)	CR-5 (As Restricted by the Registrar)
C-5 (As Restricted by the Registrar)	
L-7 Carpentry	CR-7 Carpentry
C-7 Carpentry	
C-7R Doors, Gates, Windows and Accessories	

C-7R Removable Formwork and Shoring	
C-7R Nailing and Stapling	
L-8 Floor Covering	CR-8 Floor Covering
L-13 Carpets	
L-64 Wood Floor Laying and Finishing	
C-8 Floor Covering	
C-8R Wood Flooring	
C-8R Carpet	
C-8R Composition Flooring	
C-8R Nonconventional Floor Covering	
C-8R Ceramic and Clay Floor Covering	
K-13 Carpet	
K-64 Wood Floor Laying and Finishing	
C-9R Gunite and Shotcrete	R-9 Concrete
C-9R Lightweight Concrete	
C-9R Fence Footings	
C-9R PreCast Concrete	
C-9R Sawing, Coring, Epoxy Panels and Bonding	
C-9R Terrazzo	
L-10 Drywall	CR-10 Drywall
C-10 Drywall	
L-12 Elevators	CR-12 Elevators
C-18 Elevators	
C-13R Asphalt Coating and Parking Appurtenances	R-13 Asphalt Paving
L-14 Fencing	CR-14 Fencing
C-14 Fencing	
C-14R Fencing Other Than Masonry	
C-16R CO2, Dry and Wet Chemical Systems	R-16 Fire Protection Systems
L-24 Ornamental Metals	CR-24 Ornamental Metals
C-17R Ornamental Metals	
C-17R Steel Floor, Sub Floor and Form Systems	R-17 Structural Steel and Aluminum

C-17R Tanks	
C-17R Recreational Equipment	
L-29 Machinery (As Restricted by the Registrar)	CR-29 Machinery (As Restricted by the Registrar)
C-29 Machinery (As Restricted by the Registrar)	
L-31 Masonry	CR-31 Masonry
C-31 Masonry	
C-31R Flagstone	
C-31R Stone Masonry	
L-34 Painting and Wall Covering	CR-34 Painting and Wall Covering
C-34 Painting and Wall Covering	
C-34R Surface Preparation and Waterproofing	
C-34R Wallpaper	
L-36 Plastering	CR-36 Plastering
C-36 Plastering	
C-36R Swimming Pool Plastering	
C-36R Lathing	
L-38 Sign	CR-38 Signs
C-38 Signs	
L-40 Insulation	CR-40 Insulation
C-40 Insulation	
C-40R Foam Insulation	
L-41 Septic Tanks and Systems	CR-41 Septic Tanks and Systems
C-41 Sewage Treatment Systems	
C-41R Precast Waste Treatment Systems	
L-42 Roofing	CR-42 Roofing
C-42 Roofing	
C-42R Foam and Foam Panel Roofing	
C-42R Liquid Applied Roofing	
C-42R Roofing Shingles and Shakes	
L-45 Sheet Metal	CR-45 Sheet Metal
C-45 Sheet Metal	
C-45R Premanufactured Fire Places	

L-48 Ceramic, Plastic and Metal Tile	CR-48 Ceramic, Plastic and Metal Tile
C-48 Ceramic, Plastic and Metal Tile	
C-48R Swimming Pool Tile	
L-54 Water Conditioning Equipment	CR-54 Water Conditioning Equipment
C-37R Water Conditioning Equipment	
L-56 Welding	CR-56 Welding
C-17R Welding	
L-57 Wrecking	CR-57 Wrecking
C-22R Wrecking	
L-60 Finish Carpentry	CR-60 Finish Carpentry
C-30 Finish Carpentry	
C-30R Kitchen and Bathroom Components	
C-30R Doors, Windows, Gates, Tub and Shower Enclosures	
C-30R Cultured Marble	
C-30R Weatherstripping	
L-61 Carpentry, Remodeling and Repairs	CR-61 Carpentry, Remodeling and Repairs
C-61 Limited Remodeling and Repair Contractor	
C-68 Mobile Home Remodeling and Repair	
L-62 Reinforcing Bar and Wire Mesh	CR-62 Reinforcing Bar and Wire Mesh
C-17R Rebar and Wire Mesh	
L-63 Appliances	CR-63 Appliances
C-63 Appliances	
L-65 Glazing	CR-65 Glazing
C-65 Glazing	
C-65R Skylights	
C-65R Storm Windows and Doors	
C-65R Mirrors	
C-65R Window Treatment	
L-67 Low Voltage Communications Systems	CR-67 Low Voltage Communication Systems
C-12 Low Voltage Communication Systems	

Historical Note

Former Rule 7. Former Section R4-9-07 repealed, new Section R4-9-07 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-07 repealed, new Section R4-9-07 adopted effective April 18, 1984 (Supp. 84-2). Former Section R4-9-07 renumbered without change as Section R4-9-107 (Supp 87-3). Repealed effective October 22, 1992 (Supp. 92-4). New Section R4-9-107 made by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-108. ~~Minimum Construction~~ WORKMANSHIP Standards

A. A contractor shall perform all work in a professional AND WORKMANLIKE manner.

B. A contractor shall perform all work in accordance with any applicable building codes and professional industry standards. For work to be performed in accordance with professional industry standards, a contractor shall use such skills, prudence, and diligence in performing and completing tasks undertaken that the completed work meets the standards of a similarly licensed contractor possessing ordinary skill and capacity.

C. All work performed by a contractor in a county, city, or town that has not adopted building codes or where any adopted building codes do not contain specific provisions applicable to that aspect of construction work shall be performed in accordance with professional industry standards.

Historical Note

Former Rule 8. Former Section R4-9-08 repealed, new Section R4-9-08 adopted effective February 23, 1976 (Supp. 76-1). Amended effective October 18, 1979 (Supp. 79-5). Amended subsection (C) effective April 23, 1981 (Supp. 81-2). Amended subsection (C) effective April 18, 1984 (Supp. 84-2). Former Section R4-9-08 renumbered without change as Section R4-9-108 (Supp. 87-3). Amended effective April 20, 1993 (Supp. 93-2). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 5028, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-109. Name of Licensee or Applicant

~~**A.** A licensee shall do business under the name on the license issued and ensure that the same name is used on the license bond.~~

~~**B.** If a corporation is doing business in the name of a division or using a trade name, the corporation shall ensure that all names are shown on any application.~~

~~**C.** If applying for a license or a name change, a corporation shall submit written evidence that it is in good standing or that the new name has been filed with the Arizona Corporation Commission.~~

~~**D.** The Registrar shall grant a request for name change if there is no change in the legal entity, the name is available, and the request is submitted in writing, together with the required license fee and a cash deposit or bond rider that reflects the name change.~~

~~**E.** The Registrar may elect to reject an application, refuse to issue a license, or deny the name change of an existing license, based on a review of whether the proposed name is identical or so similar to that of an existing licensee or license applicant that it may cause confusion.~~

~~**F.** The Registrar shall not accept an application or issue a license if it contains the name of a building trade or craft for which the contractor is not qualified.~~

A. **DEFINITIONS.**
   1. *OFFICIAL NAME OF RECORD.* THE TERM "OFFICIAL NAME OF RECORD" MEANS EITHER:
      A. THE NAME OF THE LICENSEE ON FILE AT THE ARIZONA CORPORATION COMMISSION, IF THE LICENSEE IS A CORPORATION OR A LIMITED LIABILITY COMPANY;
      B. THE NAME OF THE LICENSEE ON FILE AT THE SECRETARY OF STATE'S OFFICE, IF THE LICENSEE IS A PARTNERSHIP; OR
      C. THE NAME OF THE LICENSEE ON A GOVERNMENT-ISSUED IDENTIFICATION CARD, IF THE LICENSEE IS AN INDIVIDUAL OPERATING AS A SOLE PROPRIETORSHIP.
   2. *TRADE NAME AND DBA.* THE TERMS "TRADE NAME" AND "DBA" EACH MEAN THE NAME IN WHICH THE LICENSEE ACTUALLY DOES BUSINESS AS A CONTRACTOR.

B. **GENERAL RULES ABOUT THE LICENSEE'S NAME**.
   1. *NAMES ON A LICENSE.* ON ANY LICENSE ISSUED BY THE REGISTRAR, THE REGISTRAR MUST INCLUDE:
      A. THE LICENSEE'S OFFICIAL NAME OF RECORD, AND
      B. ANY TRADE NAME USED WITH THAT LICENSE.
   2. *NAME ON THE BOND.* EVERY NAME ON THE LICENSEE'S LICENSE MUST BE ON THE LICENSE BOND EXACTLY AS IT APPEARS ON THE LICENSE.
   3. *LICENSEE'S NAME AND THE LICENSE SCOPE.* NEITHER A LICENSEE'S OFFICIAL NAME OF RECORD NOR ITS TRADE NAME MAY INCLUDE, REFERENCE, OR SUGGEST A SCOPE OF WORK THAT IS NOT INCLUDED IN THE SCOPE OF THE LICENSE ISSUED BY THE REGISTRAR. THIS PROHIBITION DOES NOT APPLY IF:
      A. THE LICENSEE HOLDS A SEPARATE LICENSE WITH A SCOPE THAT IS INCLUDED, REFERENCED, OR SUGGESTED BY THE LICENSEE'S NAME; OR
      B. THE LICENSEE:
         1. DOES NOT USE THE OFFICIAL NAME OF RECORD TO DO BUSINESS AS A CONTRACTOR, AND

2. USES INSTEAD A TRADE NAME THAT DOES NOT INCLUDE, REFERENCE, OR SUGGEST A SCOPE OF WORK THAT IS NOT INCLUDED IN THE SCOPE OF THE LICENSE.

4. *CONDUCTING BUSINESS USING A NAME ON THE LICENSE.* ANY TIME A LICENSEE CONDUCTS BUSINESS IN ARIZONA AS A CONTRACTOR, THE LICENSEE MUST CONDUCT THAT BUSINESS USING EITHER THE OFFICIAL NAME OF RECORD OR THE TRADE NAME ON THE LICENSE ISSUED BY THE REGISTRAR.

C. **RULES ABOUT THE LICENSEE'S NAME AT THE TIME OF A LICENSE APPLICATION.**

1. *EVIDENCE OF OFFICIAL NAME OF RECORD.* WHEN APPLYING FOR A LICENSE, THE APPLICANT MUST PROVIDE THE REGISTRAR WITH SATISFACTORY EVIDENCE OF THE APPLICANT'S OFFICIAL NAME OF RECORD.
2. *APPLICANT'S NAME AS BASIS FOR DENIAL.* THE REGISTRAR MAY DENY AN APPLICATION FOR A LICENSE IF:
   A. THE ISSUED LICENSE WOULD VIOLATE THIS RULE; OR
   B. CONDUCTING BUSINESS AS A CONTRACTOR USING ANY NAME ON THE LICENSE WOULD, UNDER A.R.S. § 32-1154(A)(15), CONSTITUTE ANY FALSE, MISLEADING, OR DECEPTIVE ADVERTISING WHEREBY ANY MEMBER OF THE PUBLIC MAY BE MISLED AND INJURED.

D. **RULES ABOUT THE LICENSEE'S REQUEST TO CHANGE ITS NAME ON A LICENSE.** IF A LICENSEE REQUESTS IN WRITING THAT THE REGISTRAR CHANGE ONE OR MORE NAMES ON A LICENSE, THE REGISTRAR MUST GRANT THE REQUEST IF:

1. THERE HAS BEEN NO CHANGE IN THE LEGAL FORM OF THE LICENSEE;
2. THERE HAS BEEN NO CHANGE IN THE OWNERSHIP OF THE LICENSEE;
3. THE LICENSEE PROVIDES A BOND RIDER;
4. EVERY REQUESTED NAME IS PRINTED ON THE BOND RIDER EXACTLY;
5. THE LICENSEE PROVIDES THE FEE FOR THE NAME CHANGE; AND
6. THE REQUESTED NAME DOES NOT VIOLATE THIS RULE OR ANY PROVISION IN CHAPTER 10, TITLE 32.

Historical Note

Former Rule 9. Former Section R4-9-09 repealed, new Section R4-9-09 adopted effective February 23, 1976 (Supp. 76-1). Amended effective September 27, 1976 (Supp. 76-4). Amended subsections (B), (C), and (D) effective April 18, 1984 (Supp. 84-2). Former Section R4-9-09 renumbered without change as Section R4-9-109 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4).

R4-9-110. Change of Legal Entity and Cancellation of License

A. Pursuant to A.R.S. § 32-1124, licenses are nontransferable. A new license is required whenever the licensee's legal entity changes. A change in legal entity includes, but is not limited to:

1. Changes in ownership of a sole proprietorship;
2. Change of a controlling partner in a partnership;
3. Changing from one corporate entity to a different corporate entity;
4. Changing business entities, regardless of whether ownership changes, (e.g. from a corporation or a sole proprietor to a limited liability company); or
5. Merging with another business, where the business holding the license becomes the inactive business after the merger.

B. A license may be cancelled upon the written request of the owner of a sole proprietorship, a controlling partner of a partnership, or in the case of a corporation or a limited liability company any person with written evidence of authority to cancel the license.

Historical Note

Former Rule 10. Former Section R4-9-10 repealed, new Section R4-9-10 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-10 renumbered without change as Section R4-9-110 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-111. OPTING OUT OF DUAL LICENSE CLASSIFICATIONS

Any other rule notwithstanding, if a contractor holds a dual license, then that contractor may, at the time of the license's renewal, choose:

1. To retain the dual license;
2. To designate the license as commercial; or,
3. To designate the license as residential.

If a license is designated as either commercial or residential under this Rule, that designation is permanent.

Historical Note

Former Rule 11. Former Section R4-9-11 repealed effective February 23, 1976 (Supp. 76-1). Adopted effective July 26, 1976 (Supp. 76-4). Amended effective April 18, 1979 (Supp. 84-2). Correction: Previous Historical Note should read:

"Amended effective April 18, 1984"; Former Section R4-9-11 renumbered without change as Section R4-9-111 (Supp. 87-3). Repealed effective January 20, 1998 (Supp. 98-1).

R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits

A. Bond limits. In accordance with the provisions of A.R.S. § 32-1152, license bonds are established in the following amounts, based upon the estimated annual volume of work anticipated by the contractor within the State of Arizona for the ensuing fiscal year:

	License Category	Estimated Annual Volume (Per License Category)	Bond Amount
1.	General Commercial Contracting and Engineering Contracting	Less than $150,000	$5,000
		$150,000 or more, but less than $500,000	$15,000
		$500,000 or more, but less than $1,000,000	$25,000
		$1,000,000 or more, but less than $5,000,000	$50,000
		$5,000,000 or more, but less than $10,000,000	$75,000
		$10,000,000 or more	$100,000
2.	Specialty Commercial Contracting	Less than $150,000	$2,500
		$150,000 or more, but less than $500,000	$7,000
		$500,000 or more, but less than $1,000,000	$17,500
		$1,000,000 or more, but less than $5,000,000	$25,000
		$5,000,000 or more, but less than $10,000,000	$37,500
		$10,000,000 or more	$50,000
3.	General Residential Contracting		
		Less than $750,000	$9,000
		$750,000 or more	$15,000

4. Specialty Residential Contracting

Less than $375,000	$4,250
$375,000 or more	$7,500

5. General Dual License Contracting.

The amount of a General Dual License Contracting bond is determined under subsection (A)(3), based on the contractor's estimated volume of general residential contracting, and subsection (A)(1), based on the contractor's estimated volume of general commercial contracting. The contractor shall ensure that the bond issuer separately specifies on the bond the bond amounts applicable to general residential contracting and general commercial contracting.

6. Specialty Dual License Contracting.

The amount of a Specialty Dual license Contracting bond is determined under subsection (A)(4), based on the contractor's estimated volume of specialty residential contracting, and subsection (A)(2), based on the contractor's estimated volume of specialty commercial contracting. The contractor shall ensure that the bond issuer separately specifies on the bond the bond amounts applicable to specialty residential contracting and specialty commercial contracting.

B. New licenses. On an application for a new license for any license category listed above, an applicant shall estimate the applicant's annual volume of work within the state of Arizona and comply with the bond requirements of this Section for the relevant category of license. The Registrar considers the filing of a bond or deposit in a specified amount to be the equivalent of submitting a volume estimate within the dollar limitations applicable for the bond amount.

C. Renewal. To renew a license an applicant shall complete a form provided by the Registrar of Contractors. If the contractor files a new bond or continues a bond or deposit in a specified amount, the Registrar considers these actions to be the equivalent of submitting a volume estimate within the dollar limitations applicable for the bond amount. The Registrar of Contractors is not responsible for over or under estimates of volume of work made by the licensee or for the sufficiency of any bond or deposit. The Registrar considers a gross underestimate knowingly made by a licensee to be a material misrepresentation, which can subject the licensee to suspension or revocation of license.

D. Increases and decreases of bond amounts. Based on the actual amount of the contractor's gross volume of work, a contractor may increase the bond amount at any time. A surety bond or cash deposit in lieu of a bond cannot be decreased except at the time of license renewal.

E. Effective date of bonds and deposits. A license bond or cash deposit is not effective until the licensee files it at a Registrar of Contractors office. If a license bond is filed before the effective date indicated on the bond, the bond becomes effective on the indicated date.

F. The changes to bond amounts made in this Section become enforceable on the next license renewal after June 30, 2014.

Historical Note

Former Rule 12. Former Section R4-9-12 repealed, new Section R4-9-12 adopted effective February 23, 1976 (Supp. 76-1). Amended effective October 17, 1978 (Supp. 78-5). Amended subsection (C) effective August 15, 1980 (Supp. 80-4). Amended subsections (A), (B), and (C) effective July 9, 1987; former Section R4-9-12 renumbered as Section R4-9-112 (Supp. 87-3). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-113. Application Process

~~**A.** In accordance with the provisions of A.R.S. § 32-1122 an applicant for licensure shall submit a verified application on form prescribed by the Registrar of Contractors.~~

~~**B.** For the purposes of A.R.S. § 41-1073, the Registrar establishes the following time-frames for the issuance of a contractor license.~~

~~1. Administrative completeness review time-frame: 40 calendar days~~

~~2. Substantive review time-frame: 20 calendar days~~

~~3. Overall agency time-frame: 60 calendar days~~

~~**C.** During the administrative completeness review time-frame the Registrar shall review an application for administrative completeness and either issue the license or mail a written notice of completeness or deficiencies within 40 days from the date of receipt. If deficiencies are found in the application, the Registrar shall mail the applicant a written notice containing a comprehensive list of the specific deficiencies. The 40-day time-frame for the Registrar to finish the review for completeness shall be suspended from the date the notice of deficiencies is mailed until the Registrar receives all requested information.~~

~~**D.** During the substantive review time-frame the Registrar shall complete a substantive review of the applicant's qualifications and grant, deny, or mail a final comprehensive notice of deficiencies within 20 days after expiration of the administrative completeness review time-frame.~~

~~If the Registrar finds deficiencies during the substantive review of the application, the Registrar shall mail one final comprehensive request for additional information to the applicant. The 20-day time-frame for the Registrar to finish the~~

~~substantive review shall be suspended from the date the request for additional information is mailed until the Registrar receives all requested information.~~

~~**E.** Compliance with the administrative completeness review, substantive review and overall time-frames:~~

~~1. By mutual agreement, an applicant and the Registrar may agree to extend the substantive review and overall time-frames by 15 calendar days.~~

~~2. The Registrar may return an application if it does not receive the information it requests during the administrative completeness review or substantive review periods within 30 calendar days from the date the registrar mailed the request for additional information. The return of a license application shall result in the forfeiture of the application fee, but all other license fees shall be returned to the applicant. An applicant shall pay an application fee each time it submits a returned license application.~~

~~**F.** For the purpose of this Section, 1st-class mail sent to the address on the application shall serve as legal notice.~~

~~**G.** In computing any period of time prescribed or allowed by this Section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.~~

~~**H.** Notwithstanding any provisions of this Section the applicant may apply to the Registrar in writing to withdraw a license application. The withdrawal of a license application shall result in the forfeiture of the application processing fee, but all other license fees shall be returned to the applicant.~~

A. **TIME FRAMES FOR NEW LICENSES.**
   1. **OVERALL TIME FRAME FOR ISSUING NEW LICENSES.** WHEN DECIDING WHETHER TO GRANT OR DENY A NEW CONTRACTOR'S LICENSE, THE REGISTRAR MUST OPERATE WITHIN AN OVERALL TIME FRAME OF 60 CALENDAR DAYS.
   2. **ADMINISTRATIVE COMPLETENESS REVIEW TIME FRAME.** DURING THE OVERALL TIME FRAME OF 60 CALENDAR DAYS, THE REGISTRAR MUST PERFORM THE ADMINISTRATIVE COMPLETENESS REVIEW WITHIN 20 DAYS.
   3. **SUBSTANTIVE REVIEW TIME FRAME.** DURING THE OVERALL TIME FRAME OF 60 CALENDAR DAYS, THE REGISTRAR MUST PERFORM THE SUBSTANTIVE REVIEW WITHIN 40 DAYS.

B. **RETURN OF LICENSE APPLICATION.**
   1. **REGISTRAR'S RIGHT TO RETURN APPLICATION.** THE REGISTRAR MAY RETURN AN APPLICATION IF THE REGISTRAR:
      A. ISSUES EITHER:
         1. A WRITTEN NOTICE OF DEFICIENCIES UNDER A.R.S. § 41-1074; OR
         2. A COMPREHENSIVE WRITTEN REQUEST FOR ADDITIONAL INFORMATION UNDER A.R.S. § 41-1075; AND
      B. DOES NOT RECEIVE WITHIN 30 CALENDAR DAYS INFORMATION SUFFICIENTLY RESPONSIVE TO EITHER THE NOTICE OR THE REQUEST.
   2. **CONSEQUENCES FOR FEES.** IF THE REGISTRAR RETURNS AN APPLICATION, THEN:
      A. THE APPLICANT FORFEITS THE APPLICATION FEE; BUT
      B. THE REGISTRAR MUST RETURN ALL OTHER LICENSE FEES.
   3. **RESUBMISSION REQUIRES NEW FEE.** IF THE APPLICANT RESUBMITS A LICENSE APPLICATION THAT HAS BEEN RETURNED, THEN THE APPLICANT MUST PAY A NEW APPLICATION FEE.

C. **WITHDRAWAL OF THE LICENSE APPLICATION.**
   1. **APPLICANT'S RIGHT TO WITHDRAW.** AN APPLICANT MAY WITHDRAW ITS LICENSE APPLICATION AT ANY TIME.
   2. **WRITTEN REQUEST.** THE APPLICANT'S REQUEST FOR WITHDRAWAL MUST BE IN WRITING.
   3. **CONSEQUENCES FOR FEES.** IF THE APPLICANT WITHDRAWS ITS APPLICATION, THEN:
      A. THE APPLICANT FORFEITS THE APPLICATION FEE; BUT
      B. THE REGISTRAR MUST RETURN ALL OTHER LICENSE FEES.

Historical Note

Adopted effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-114. Reserved

R4-9-115. Posting

~~**A.** The Registrar shall not issue a license until expiration of the posting period in A.R.S. § 32-1104(C).~~

~~**B.** The Registrar may waive part of the posting period for applicants and personnel of applicants who have previously undergone the 20-day posting period.~~

~~**C.** The Registrar may increase the posting period beyond 20 days, but no more than 60 days for applicants who have been on a license that was disciplined.~~

~~**D.** Posting shall be done on the Registrar's web site.~~

A. **EXPIRATION OF POSTING PERIOD.** THE REGISTRAR CANNOT ISSUE A LICENSE UNTIL THE POSTING PERIOD REQUIRED BY A.R.S. § 32-1104(C) EXPIRES, UNLESS THE REGISTRAR WAIVES THE REQUIREMENT AS PROVIDED IN THAT STATUTE OR IN THIS RULE.

B. **ADDITIONAL WAIVER.** IN ADDITION TO THE WAIVER PERMITTED IN A.R.S. § 32-1104(C) FOR THE APPLICANT AND THE QUALIFYING PARTY, THE REGISTRAR MAY ALSO WAIVE PART OF THE POSTING PERIOD IF ALL OTHER PERSONNEL NAMED ON THE APPLICATION FOR THE LICENSE HAVE PREVIOUSLY BEEN POSTED FOR SOME OTHER LICENSE.

C. **WEBSITE PUBLICATION.** THE REGISTRAR MAY SATISFY THE POSTING REQUIREMENT IN A.R.S. § 32-1104(C) BY PUBLICATION ON THE REGISTRAR'S WEBSITE.

Historical Note

Former Rule 15. Former Section R4-9-15 repealed, new Section R4-9-15 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-15 renumbered without change as Section R4-9-115 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-116. EXPIRED~~License Renewal~~

~~**A.** To renew a license, a licensee shall submit the following information to the Registrar and advise the Registrar of any change in the information within 30 days of the change:~~

~~1. If the licensee is a corporation or a limited liability company, evidence that the entity is in good standing with the Arizona Corporation Commission.~~

~~2. The licensee's current privilege license number, issued under A.R.S. § 42-5005.~~

~~**B.** A licensee shall renew each license on or before the renewal date. Failure to comply results in suspension of the license on the day following the renewal date by operation of law. The Registrar shall collect a $50.00 late fee if renewal is completed after the renewal date. Based on the severity of the violation, the Registrar may refuse to renew a license after determining that a licensee has committed or been found guilty of any act listed in A.R.S. § 32-1154(A).~~

~~**C.** To renew a contracting license, a licensee shall submit an application for renewal to the Registrar, accompanied by the required renewal fee. Timely submission of an application is evidenced by the date stamped on the documents by the Registrar or the date on "postage prepaid" documents if the submission is deposited in the United States mail, postage prepaid, on or before the renewal date. Timely submission authorizes the licensee to operate as a contractor until actual issuance of the renewal license.~~

~~**D.** If a license has been suspended by operation of law for failure to renew, a licensee may still renew the license within one year of its suspension by submitting an application for renewal and paying the applicable renewal fee and a $50.00 late fee. If a license has been suspended for one or more years for failure to renew, the license shall expire and the former licensee must submit an application for a new license.~~

Historical Note

Former Rule 16. Former Section R4-9-16 repealed, new Section R4-9-16 adopted effective February 23, 1976 (Supp. 76-1). Amended effective October 14, 1977 (Supp. 77-5). Amended effective October 26, 1978 (Supp. 78-5). Amended effective April 18, 1984 (Supp. 84-2). Former Section R4-9-16 renumbered without change as Section R4-9-116 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-117. Prior Record

~~In any disciplinary proceeding the Administrative Law Judge and the Registrar may consider the licensee's entire license file including the record of prior warning letters, complaints, cease and desist orders, citations and final administrative decisions or orders, or both.~~

IN DETERMINING THE APPROPRIATE DISCIPLINE FOR A LICENSED CONTRACTOR, THE ADMINISTRATIVE LAW JUDGE AND THE REGISTRAR MAY CONSIDER NOT ONLY FACTS IN THE CURRENT CASE, BUT ALSO FACTS IN PRIOR CASES AND ANY DOCUMENTS REGARDING THE CONTRACTOR ON FILE WITH THE REGISTRAR.

Historical Note

Former Rule 17. Former Section R4-9-17 repealed, new Section R4-9-17 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-17 renumbered without change as Section R4-9-117 (Supp. 87-3). Amended by final rulemaking at 9 A.A.R. 3182, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-118. PREHEARING DISCLOSURE REQUIREMENT

A. **Disclosure Statement.** Before the hearing, a party must prepare a disclosure statement. The disclosure statement must contain:

1. A list of all the witnesses the party will call to testify; and,
2. A list of all the exhibits that the party will use at the hearing.

B. **Exchanging Disclosure Statements and Exhibits.**

1. **Contents.** A party to the hearing must serve on every other party and file with the Office of Administrative Hearings a copy of:
   a. The disclosure statement; and,

b. Any exhibit that the party will use at the hearing.

2. **Manner.** The disclosure statement and the exhibits must be served on every other party and filed with the Office of Administrative Hearings. The service and filing must be performed in accordance with Arizona Administrative Code R2-19-108 Filing Documents.

3. **Timing.** The disclosure statement and the exhibits must be served not less than seven calendar days before the date of the hearing.

C. Consequences for Failing to Disclose.

1. **Timely Disclosure Required for Use at Hearing.** Witnesses and exhibits may be used at the hearing only if they are contained in the disclosure statement and timely disclosed in accordance with Section B of this Rule, except for impeachment purposes or for good cause shown.

2. **Administrative Law Judge's Authority.** If there is neither an impeachment purpose nor good cause for using a witness or an exhibit that was not timely disclosed, then the administrative law judge may:

   a. Order that certain witnesses or exhibits not be used at the hearing;

   b. Order that a particular fact is or is not established for the record; or,

   c. Order that a charge, a defense, a claim, or some portion thereof, be dismissed.

3. **Administrative Record.** Nothing in this Rule prohibits the administrative law judge from considering anything contained in the administrative record.

R4-9-119. Reserved

R4-9-120. Rehearing or Review of Decision

A. The Registrar of Contractors shall provide an opportunity for a rehearing or review of its decisions on a hearing under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. Except as provided in subsection (F), any party who is aggrieved by the decision on a hearing in a contested case or appealable agency action before the Registrar of Contractors may file with the Registrar of Contractors a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review.

C. The Registrar of Contractors may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the proceedings of the Registrar of Contractors or the Administrative Law Judge, or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Registrar of Contractors, Office of Administrative Hearings, Administrative Law Judge, or 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 or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceeding; or
7. The decision is not justified by the evidence or is contrary to law.

D. The Registrar of Contractors may affirm or modify a decision on a hearing or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). After giving the parties notice and an opportunity to be heard, the Registrar of Contractors may grant a motion for rehearing for a reason not stated in the motion. An order modifying a decision or granting a rehearing shall specify the particular ground for the order. A rehearing shall cover only the matter specified in the order.

E. Not later than 35 days after the date of a decision, and after giving the parties notice and an opportunity to be heard, the Registrar of Contractors may, on its own initiative, order a rehearing or review of its decision on a hearing for any reason for which it might have granted relief on motion of a party.

F. If the Registrar of Contractors makes a specific finding that the immediate effectiveness of a decision on a hearing is necessary for the preservation of the public health, safety, or welfare and that a rehearing or review of the decision on a hearing is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision on a hearing is issued as a final decision without an opportunity for review or rehearing, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Registrar of Contractors' final decisions.

G. For purposes of this Section the terms "contested case" and "party" have the same meanings as in A.R.S. § 41-1001.

H. To the extent that the provisions of this Section are in conflict with the provisions of any statute providing for review or rehearing of a decision of the Registrar of Contractors, the statutory provisions govern.

Historical Note

Former Rule 20. Repealed effective February 23, 1976 (Supp. 76-1). New Section R4-9-20 adopted effective June 18, 1982 (Supp. 82-3). Former Section R4-9-20 renumbered without change as Section R4-9-120 (Supp. 87-3). Amended by final rulemaking at 9 A.A.R. 1350, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-121. EXPIRED~~Unauthorized Communications~~

~~**A.** The purpose of this rule is to assist the Registrar of Contractors and its employees in avoiding the possibility of prejudice, real or apparent, in proceedings before the Registrar.~~

~~**B.** The provisions of this rule apply in the following contested proceedings: after a letter is issued denying a license application or a license renewal, a citation is issued, or an order is issued denying or reducing the amount of a recovery fund claim.~~

~~**C.** Prohibitions:~~

~~1. A person shall not make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding to the Registrar or an employee involved in the decision-making process for that proceeding.~~

~~2. Neither the Registrar nor its employees who are involved in the decision-making process of a contested proceeding shall make, request, entertain, or consider an unauthorized communication concerning the merits of the proceeding.~~

~~3. The provisions of this rule do not prohibit:~~

~~a. Communications regarding procedural matters;~~

~~b. Communications regarding any other proceedings;~~

~~c. Intra-agency or non-party communications regarding purely technical and legal matters;~~

~~d. Communications among hearing officers, non-party staff and the Registrar.~~

~~**D.** Remedy:~~

~~1. The Registrar and its decision-making employees who receive an oral or written offer of any communication prohibited by this rule shall decline to receive such communication and explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient shall advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made will be prepared, and the statement will be filed in the public record of the case or proceeding.~~

~~2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.~~

~~3. If a party to a contested proceeding makes or causes to be made an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.~~

Historical Note

Repealed effective February 23, 1976 (Supp. 76-1). New Section R4-9-21 adopted effective April 18, 1984 (Supp. 84-2). Amended effective July 9, 1987; former Section R4-9-21 renumbered as Section R4-9-121 (Supp. 87-3). Amended effective February 4, 1993 (Supp. 93-1). Repealed by final rulemaking at 9 A.A.R. 3182, effective August 30, 2003 (Supp. 03-3). New Section R4-9-121 made by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-122. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-123. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-124. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-125. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-126. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-127. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-128. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-129. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-130. Schedule of Fees

An applicant shall submit a separate application for each classification of license. The following application fees, biennial license fees, biennial license renewal fees and fees for other services shall be applicable in accordance with the provisions of A.R.S. §§ 32-1123.01, 32-1126 and 32-1132. The fee for an annual license granted pursuant to A.R.S. § 32-1123.01, as an exception to the biennial license renewal requirement, shall be one-half of the fee for the biennial license renewal.

Classification of License	***Application Processing Fee***	***Fee for Each Biennial License***	***Fee for Each Biennial License Renewal***
1. COMMERCIAL CONTRACTING			
a. General Commercial Contracting (Includes all A and B Commercial classifications)	$200	$580	$580
b. Specialty Commercial Contracting (Includes all C classifications)	$100	$480	$480
2. RESIDENTIAL CONTRACTING			
a. General Residential Contracting (Includes all B Residential classifications)	$180	$320	$320
b. Specialty Residential Contracting (Includes all R classifications)	$80	$270	$270
3. GENERAL DUAL LICENSED CONTRACTING			
General Dual Licensed Contracting (Includes all KA, KB, KE and KO classifications)	$200	$480	$480
4. SPECIALTY DUAL LICENSE CONTRACTING			
Class CR	$100	$380	$380
5. PARTICIPATION IN RECOVERY FUND			
Recovery Fund Assessment		$370	$270
6. FEES FOR OTHER SERVICES			

a. Application to change qualifying party	$100
b. Application to change name of licensee	$30

Historical Note

Adopted effective February 4, 1993 (Supp. 93-1). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 3160, effective July 2, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-131. Assessment of Civil Penalties

In assessing a civil penalty as provided for under A.R.S. § 32-1166(A), the Registrar shall give due consideration to whether the person cited or any individual acting on that person's behalf has committed one or more of the following acts in determining the gravity of the cited violation:

1. Falsely represented to be a licensed contractor.
2. Failed to perform any work for which money was received.
3. Executed or used any false or misleading documents for the purpose of inducing a person to enter into a contract or to pay money for work to be performed.
4. Made false or misleading statements for the purpose of inducing a person to enter into a contract or to pay money for work to be performed.
5. Failed or neglected to apply funds which were received for the purpose of obtaining or paying for services, labor, materials, or equipment.
6. Performed work that was or had the potential to become hazardous to the health, safety, or general welfare of the public.
7. Performed work that deliberately was in violation of building codes, safety laws, labor laws, workers' compensation laws, or unemployment insurance laws.
8. Performed work that failed to meet minimum acceptable trade or industry standards or practices or was not performed in a good and workmanlike manner.
9. Has committed any other act which would otherwise be cause for disciplinary action if the person cited had been properly licensed pursuant to A.R.S. Title 32, Chapter 10.
10. Has committed two or more prior violations.
11. Performed work that has caused loss or damage to the structure, its appurtenances, or property being worked upon or has caused loss or injury to any person.

Historical Note

Adopted effective May 26, 1994 (Supp. 94-2).

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 9. REGISTRAR OF CONTRACTORS

(Authority: A.R.S. § 32-1101 et seq.)

ARTICLE 1. GENERAL PROVISIONS

Section
R4-9-101. Definitions
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ARTICLE 1. GENERAL PROVISIONS

R4-9-101. Definitions

A. Appurtenances means all structures and improvements subordinate to a residence within residential property lines, excluding the residential structure itself, such as driveways, fences, patios, swimming pools, landscaping, sport courts, and gazebos.

B. Licensee means a business entity (sole proprietor, partnership, limited liability company or corporation) to which a license is issued and not the individuals comprising the ownership or management of the licensee, except for a sole proprietor. The license is held by the licensee and not the qualifying party.

Historical Note

Former Rule I. Former Section R4-9-01 repealed, new Section R4-9-01 adopted effective February 23, 1976 (Supp. 76-1). Amended effective November 21, 1979 (Supp. 79-6). Amended effective April 18, 1984 (Supp. 84-2). Former Section R4-9-01 amended effective July 9, 1987, and renumbered as Section R4-9-101 (Supp. 87-3). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-102. Commercial Contractor License Classifications and Scopes of Work

A. Commercial contractor license classifications. License classifications for commercial contractors are as follows:

ENGINEERING CONTRACTING
- A General Engineering
- A-4 Drilling
- A-5 Excavating, Grading and Oil Surfacing
- A-7 Piers and Foundations
- A-9 Swimming Pools
- A-11 Steel and Aluminum Erection
- A-12 Sewers, Drains and Pipe Laying
- A-14 Asphalt Paving
- A-15 Seal Coating
- A-16 Waterworks
- A-17 Electrical and Transmission Lines
- A-19 Swimming Pools, Including Solar

GENERAL COMMERCIAL CONTRACTING
- B-1 General Commercial Contractor
- B-2 General Small Commercial Contractor

SPECIALTY COMMERCIAL CONTRACTING
- C-4 Boilers, Steamfitting and Process Piping
- C-6 Swimming Pool Service and Repair
- C-9 Concrete
- C-11 Electrical
- C-16 Fire Protection Systems
- C-27 Lightweight Partitions
- C-37 Plumbing
- C-39 Air Conditioning and Refrigeration
- C-49 Refrigeration
- C-53 Water Well Drilling
- C-58 Comfort Heating, Ventilating, Evaporative Cooling
- C-74 Boilers, Steamfitting and Process Piping, Including Solar
- C-77 Plumbing Including Solar
- C-78 Solar Plumbing Liquid Systems Only
- C-79 Air Conditioning and Refrigeration, Including Solar

B. Commercial contracting scopes. The scope of work which may be done under the commercial contracting license classifications is as follows:

A- GENERAL ENGINEERING

This classification allows the licensee to construct or repair:

1. Fixed works
2. Streets
3. Roads
4. Power and utility plants
5. Dams
6. Hydroelectric plants
7. Sewage and waste disposal plants
8. Bridges
9. Tunnels
10. Overpasses
11. Public parks

Also included are the scopes of work allowed by the A-4 through A-19 and CR-2 through CR-80 classifications.

This classification does not include work authorized by the B-1, B-2, B-, or B-3 scopes.

A-4 DRILLING

Drilling includes horizontal and vertical drilling or boring, constructing, deepening, repairing, or abandoning wells; exploring for water, gas, and oil; and constructing dry wells, and monitor wells. Also included is the erection of rigs, derricks and related substructures, and installation, service and repair of pumps and pumping equipment.

A-5 EXCAVATING, GRADING AND OIL SURFACING

This classification allows the licensee to apply oil surfacing or other similar products; place shoring, casing, geotextiles or liners; and perform incidental blasting or drilling as required for the licensee to move, alter, or repair earthen materials by:

1. Digging
2. Trenching
3. Grading
4. Horizontal boring
5. Compacting
6. Filling

This license does not allow the licensee to excavate for water, gas or oil wells.

A-7 PIERS AND FOUNDATIONS

Installation of piers and foundations using concrete, rebar, post tension and other materials common to the industry. Includes pile driving, excavation, forming and other techniques and equipment common to the industry.

A-9 SWIMMING POOLS

Construction, service, and repair of swimming pools and spas, including water and gas service lines from point of service to pool equipment, wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, backflow prevention devices, waste lines, and other integral parts of a swimming pool or spa.

Also included is the installation of swimming pool accessories, covers, safety devices, and fencing for protective purposes, if in the original contract.

A-11 STEEL AND ALUMINUM ERECTION

Field fabrication, erection, repair, and alteration of architectural and structural steel and aluminum materials common to the industry, including field layout, cutting, assembly, and erection by welding, bolting, wire tying or riveting.

A-12 SEWERS, DRAINS AND PIPE LAYING

Installation and repair of any project involving sewer access holes, the laying of pipe for storm drains, water and gas lines, irrigation, and sewers. Includes connecting sewer collector lines to building drains and the installation of septic tanks, leach lines, dry wells, all necessary connections, liners and related excavating and backfilling.

A-14 ASPHALT PAVING

Installation of asphalt paving, and all related fine grading on streets, highways, driveways, parking lots, tennis courts, running tracks, play areas, and gas station driveways and areas, using materials and accessories common to the industry. Includes the necessary excavation and grading only for height adjustment of existing sewer access holes, storm drains, water valves, sewer cleanouts, and drain gates. Also included is the scope of work allowed by the A-15 Seal Coating Classification.

A-15 SEAL COATING

Application of seal coating to asphalt paving surfaces. Includes repair of surface cracks and application of painted marking symbols.

A-16 WATERWORKS

All work necessary for the production and distribution of water including drilling well, setting casing and pump, related electrical work, related concrete work, excavation, piping for storage and distribution, storage tanks, related fencing, purification and chlorination equipment.

A-17 ELECTRICAL AND TRANSMISSION LINES

Installation, alteration, and repair of transmission lines on public right-of-ways, including erection of poles, guying systems, tower line erection, street lighting of all voltages, and all underground systems including ducts for signal, communication, and similar installations. Installing transformers, circuit breakers, capacitors, primary metering devices and other related equipment of all electrical construction is included.

All electrical systems of less than 600 volts on or inside a building are excluded.

A-19 SWIMMING POOLS, INCLUDING SOLAR

Construction, service, and repair of swimming pools and spas, with or without solar water heating devices, including water and gas service lines from point of service to pool equipment, wiring from pool equipment to first readily accessible disconnect, pool piping, fittings, backflow prevention devices, waste lines and other integral parts of a swimming pool, spa and attached solar water heating device.

Also included are swimming pool accessories, covers, safety devices, and fencing for protective purposes, if in the original contract.

B-1 GENERAL COMMERCIAL CONTRACTOR

Construction, alteration, and repair in connection with any structure built, being built, or to be built for the support, shelter, and enclosure of persons, animals, chattels, or movable property of any kind. This scope includes the supervision of all or any part of the above and includes the management, or direct or indirect supervision of any work performed.

Also included are the scopes of work allowed by the CR-2 through CR-80 license classifications. Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor. This classification does not include work authorized by the A-, B-, or B-3 scopes.

B-2 GENERAL SMALL COMMERCIAL CONTRACTOR

Small commercial construction in connection with any new structure or addition built, being built, or to be built for the support, shelter and enclosure of persons, animals, chattels or movable property of any kind for which the total amount paid to the licensee

does not exceed $750,000. This scope includes the supervision of all or any part of the above and includes the management or direct or indirect supervision of any work performed.

Also included are the scopes of work allowed by the CR-2 through CR-80 license classifications. Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor. This classification does not include work authorized by the A-, B-, or B-3 scopes.

C-4 BOILERS, STEAMFITTING AND PROCESS PIPING

Installation, alteration, and repair of steam and hot water systems and boilers, including chimney connections, flues, refractories, burners, piping, fittings, valves, thermal insulation, and accessories; fuel and water lines from source of supply to boilers; process and specialty piping and related equipment; pneumatic and electrical controls.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-6 SWIMMING POOL SERVICE AND REPAIR

Service, replacement, and repair of swimming pools including all existing connections and equipment. Pool gas heaters and gas piping from meter to heater may be installed only if the existing line and gas supply are adequate.

Application of pool coatings to interior of pool in conjunction with minor repairs to pool tile, plaster, and decks.

Excluded are chlorine gas connections, connections to potable water, and electric connections beyond first readily accessible disconnect. This classification excludes a complete replacement of plaster or pebble pool interiors and decks.

C-9 CONCRETE

All work in connection with the processing, proportioning, batching, mixing, conveying, and placing of concrete composed of materials common to the concrete industry, including finishing, coloring, curing, repairing, testing, drilling, sawing, grinding, chipping, and grouting. Placing film barriers, sealing, and waterproofing are included.

Construction, centering, and assembling forms, molds, insulating concrete forms, slipforms, and pans.

Trenching, excavating, backfilling, and grading in connection with concrete construction.

Installation of embedded items essential to or comprising an integral part of the concrete or concrete construction, including reinforcing elements and accessories.

C-11 ELECTRICAL

Installation, alteration, and repair of any wiring, related electrical material and equipment used in the generating, transmitting, or utilization of electrical energy less than 600 volts, including all overhead electrical wiring on public right-of-ways for signs and street decorations, and all underground electrical distribution systems of less than 600 volts serving private properties.

Installation, alteration, and repair on other than public right-of-ways of all outside, overhead, and underground electrical construction and all wiring in or on any building of less than 600 volts.

C-16 FIRE PROTECTION SYSTEMS

Installation, alteration, and repair of fire protection systems using water, steam, gas, or chemicals. Included is any required excavation, trenching, backfilling and grading, piping from structure, and connections to off-premise water supply adjacent to property involving a fire protection system.

Systems may include the following areas of work and related equipment: restaurant hood protection systems; fire pumps and drivers; pressure and storage tanks; all piping and valves; sprinkler heads and nozzles; and application of materials for the prevention of corrosion or freezing.

Also included are air compressors, air receivers, bottled inert gases, pressurized chemicals, manifolds, pneumatic, hydraulic, or electrical controls, low voltage signaling systems, control piping, and the flushing and testing of systems.

C-27 LIGHTWEIGHT PARTITIONS

Installation of lightweight (not to exceed 14 gauge) metal wall partitions, including suspended metal ceiling grid systems, as supporting members for the application of building materials such as: application and repair of gypsum plaster, cement, acoustical plaster, or a combination of materials and aggregates, that create a permanent coating; the application of such materials over any surface which offers either a mechanical or suction type bond, sprayed, dashed, or troweled to the surface; surface sandblasting preparatory to plastering or stucco; installation of plastering accessories and lath products manufactured to provide a key or suction type bond for the support of various type plaster coatings; and installation and repair of gypsum wall board, pointing, accessories, taping, and texturing on structures both interior and exterior.

Upon the effective date of these rules, no new applications for the C-27 classification will be accepted and no new C-27 licenses will be issued.

C-37 PLUMBING

Installation, alteration, and repair of all plumbing when performed solely within property lines and not on public easements or right-of-ways, except as hereinafter provided.

Installation, alteration, and repair of all piping, fixtures, and appliances related to water supply, including pressure vessels and tanks (excluding municipal or related water supply systems); venting and sanitary drainage systems for all fluid, semifluid, and organic wastes; septic tanks and leaching lines; roof leaders; lawn sprinklers; water conditioning equipment; piping; and equipment for swimming pools.

Also included are piping, fixtures, appliances, and pressure vessels for manufactured and natural gases, compressed air and vacuum systems, petroleum, fuel oil, nonpotable liquids, hot water heating, and hot water supply systems operating at pressures not

exceeding 30 PSIG, or temperatures not exceeding 220° F; steam heating and steam supply systems not exceeding 15 PSIG operating pressure; gas or oil fired space heaters and furnaces, excluding duct work. Piping for water cooling systems, excluding the refrigerant piping and equipment. Testing and balancing of hydronics systems.

Sewer, gas, water lines, and connections from structure to the nearest point of public supply or disposal may cross public or private easements or be installed within private easements or right-of-ways. Pipe installed across public property may not be increased in size, or make any other connection between the point of exit from private property to the point of connection at public supply or disposal. These lines shall not be installed parallel to main lines in public easements or right-of-ways.

C-39 AIR CONDITIONING AND REFRIGERATION

Installation, alteration, and repair of refrigeration and evaporative cooling systems.

Installation, alteration, and repair of heating systems of "wet", "dry" or radiant type. "Wet" systems include steam or hot water boilers and coils, or baseboard convectors, and are limited to 30 PSIG operating pressure of 220° F for hot water and 15 PSIG operating pressure for steam. Dry systems include gas fired furnaces and space heaters.

Installation, alteration, and repair of ventilation systems includes duct work, air filtering devices, water treatment devices, pneumatic or electrical controls, and control piping. Thermal and acoustical insulation of refrigerant pipes and ductwork, vibration isolation materials and devices, liquid fuel piping and tanks, water and gas piping from service connection to the equipment it serves. Testing and balancing of refrigerant, cooling, heating circuits, and air handling systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-49 REFRIGERATION

Installation, alteration, and repair of refrigeration equipment and systems used for processing, storage, and display of food products and other perishable commodities.

Includes commercial, industrial, and manufacturing processes requiring refrigeration excluding comfort air conditioning.

Systems may also include the following areas of work and related equipment: temperature, safety and capacity controls, thermal insulation, vibration isolation materials and devices; water treatment devices; construction and installation of walk-in refrigeration boxes, liquid fuel piping and tanks, water and gas piping from equipment to service connection; and testing and balancing of refrigeration equipment and systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-53 WATER WELL DRILLING

Drill new water wells or deepen existing water wells by use of standard practices including the use of cable tools, compressed air percussion, rotary, air rotary, or reverse circulation rotary methods. Includes installing casing, gravel pack, perforating and sanitary seals. Repair existing wells by sand pumping, jetting, acidizing, swabbing, clean out, reperforating, swaging, installation of annealed lines, and the removal of debris.

Includes photographing interior of wells with appropriate equipment. Installation of jet and submersible pumps; electrical pump controls and wiring from pump equipment to first readily accessible disconnect; and water line to storage or pressure tank, not to exceed 50 linear feet. Use of a test pump to develop a new well, or repair an existing well, when provided in contract, is limited to 5 horsepower.

Installation of concrete pump bases not to exceed 50 square feet.

Installation of protective fencing when included in original contract.

C-58 COMFORT HEATING, VENTILATING, EVAPORATIVE COOLING

Installation, alteration, and repair of warm air heating systems, gas fired furnaces and space heaters, ventilation and evaporative cooling units, or any combination of these.

Systems may include the following areas of work and related equipment; duct work, air filtering devices, pneumatic or electrical controls, control piping, thermal and acoustical insulation, vibration isolation materials and devices, liquid fuel piping and tanks, water and gas piping from service connection to equipment it serves. Testing and balancing of air handling systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-74 BOILERS, STEAMFITTING AND PROCESS PIPING, INCLUDING SOLAR

Installation, alteration, and repair of steam and hot water systems and boilers including solar. Also included are chimney connections, flues, refractories, burners, piping, fittings, valves, thermal insulation and accessories; fuel and water lines from source of supply to boilers; process and specialty piping and related equipment; pneumatic and electrical controls.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

C-77 PLUMBING INCLUDING SOLAR

Installation, alteration, and repair of all plumbing including solar, when performed solely within property lines and not on public easements or right-of-ways except as hereinafter provided.

Installation, alteration, and repair of all piping, fixtures and appliances related to water supply, including pressure vessels and tanks (excluding municipal or related water supply systems); venting and sanitary drainage systems for all fluid, semifluid, and organic wastes; septic tanks and leaching lines; roof

leaders; lawn sprinkler systems; water conditioning equipment; piping and equipment for swimming pools.

Also included are piping, fixtures, appliances, and pressure vessels for manufactured and natural gases, compressed air and vacuum systems, petroleum, fuel oil, nonpotable liquids, hot water heating and hot water supply systems operating at pressures not exceeding 30 PSIG or temperatures not exceeding 220° F; steam heating and steam supply systems not exceeding 15 PSIG operating pressure; gas or oil fired space heaters and furnaces excluding duct work. Piping for water cooling systems, excluding the refrigerant piping and equipment. Testing and balancing of hydronics systems.

Sewer, gas, water lines, and connections from structure to the nearest point of public supply or disposal may cross public or private easements or be installed within private easements. Pipe installed across public property may not be increased in size or make any other connection between the point of exit from private property to point of connection at public supply or disposal. These lines shall not be installed parallel to main lines in public easements or right-of-ways.

C-78 SOLAR PLUMBING LIQUID SYSTEMS ONLY

Installation, alteration, and repair of solar water heating systems operating at temperatures not exceeding 220° F, including thermosyphon, direct (open loop), and indirect (closed loop), but excludes air as a transfer medium.

Includes installation of collectors, storage and expansion tanks, heat exchangers, piping valves, pumps, sensors and low voltage controls which connect to existing plumbing and electrical stubouts at the water tank location.

Installation of solar water heating systems for swimming pools which tie into and operate from the conventional pool systems, but excludes all non-solar plumbing, electrical and mechanical systems and components.

Installation of backup and auxiliary heating systems only when such systems are included in the original contract and when such systems are an integral part of the solar collector or storage equipment.

C-79 AIR CONDITIONING AND REFRIGERATION INCLUDING SOLAR

Installation, alteration, and repair of refrigeration and evaporative cooling systems, including solar.

Installation, alteration, and repair of heating systems of “wet”, “dry” or radiant type. “Wet” systems include steam, or hot water boilers and coils, or baseboard convectors and are limited to 30 PSIG operating pressure of 220° F for hot water and 15 PSIG operating pressure for steam. Dry systems include gas fired furnaces and space heaters.

Installation, alteration, and repair of ventilation systems.

Installation of these systems include duct work, air filtering devices, water treatment devices, pneumatic or electrical controls, and control piping. Thermal and acoustical insulation, vibration isolation materials and devices, liquid fuel piping and tanks, and water and gas piping from service connection to equipment it serves. Testing and balancing of refrigerant, cooling and heating circuits, and air handling systems.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel.

Historical Note

Former Rule 2. Amended effective May 20, 1975, Amended effective June 13, 1975, Amended effective August 8, 1975, Amended effective August 25, 1975 (Supp. 75-1). Amended effective January 9, 1976, subsection (B) of this Section R4-9-02 renumbered as Section R4-9-03 effective February 23, 1976 (Supp. 76-1). Amended effective October 14, 1977 (Supp. 77-5). Amended effective September 13, 1978 (Supp. 78-5). Amended by adding A-20 effective July 10, 1980; adding A-21 effective July 11, 1980; adding C-77 and C-78 effective July 28, 1980; adding C-74 and C-79 effective August 15, 1980; adding C-75 and C-80 effective August 19, 1980 (Supp. 80-4). Amended by adding A-19 effective September 5, 1980 (Supp. 80-5). Repealed effective April 18, 1984 (Supp. 84-2). New Section R4-9-02 adopted effective July 9, 1987, and renumbered as Section R4-9-102 (Supp. 87-3). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-103. Residential Contractor License Classifications and Scopes of Work

A. Residential contracting license classifications. License classifications for residential contractors are as follows:

GENERAL RESIDENTIAL CONTRACTING

- B- General Residential Contractor
- B-3 General Remodeling and Repair Contractor
- B-4 General Residential Engineering Contractor
  - B-4R Corrosion Control
  - B-4R Sport Court Accessories
  - B-4R Soil Stabilization
- B-5 General Swimming Pool Contractor
  - B-5R Swimming Pool Covers
  - B-5R Fiberglassing of Swimming Pools
  - B-5R Reservoir Linings and Covers
  - B-5R Factory Fabricated Pools and Accessories
- B-6 General Swimming Pool Contractor, Including Solar
- B-10 Pre-Manufactured Spas and Hot Tubs

SPECIALTY RESIDENTIAL CONTRACTING

- R-2 Excavating, Grading and Oil Surfacing
- R-4 Boilers, Including Solar
  - R-4R Boilers
- R-6 Swimming Pool Service and Repair
- R-9 Concrete
- R-11 Electrical
- R-13 Asphalt Paving
- R-16 Fire Protection
- R-17 Structural Steel and Aluminum
- R-22 House Moving
- R-37 Plumbing, Including Solar

R-37R Plumbing
R-37R Built-In Central Vacuum Systems
R-37R Kitchen and Bathroom Fixture Refinishing
R-37R Swimming Pool Plumbing and Equipment
R-37R Gas Piping
R-37R Sewers, Drains and Pipe Laying
R-37R Solar Plumbing Liquid Systems Only

R-39 Air Conditioning and Refrigeration, Including Solar
R-39R Air Conditioning and Refrigeration
R-39R Gas Refrigeration
R-39R Temperature Control Systems
R-39R Warm Air Heating, Evaporative Cooling and Ventilating
R-39R Evaporative Cooling and Ventilators
R-39R Pre-Coolers

R-53 Drilling

R-62 Minor Home Improvements

B. RESIDENTIAL CONTRACTING SCOPES. The "R" designation after the license classification means that the licensee's scope of work is restricted to the description stated in the license title. The scope of work which may be done under the residential contracting license classifications is as follows:

B- GENERAL RESIDENTIAL CONTRACTOR
Construction of all or any part of a residential structure or appurtenance. Also included are the scopes of work allowed by the B-3 and CR-2 through CR-80 license classifications. Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor. This classification does not include work authorized by the A-, B-1, or B-2 scopes.

B-3 GENERAL REMODELING AND REPAIR CONTRACTOR
Remodeling or repair of an existing residential structure or appurtenance except for electrical, plumbing, mechanical, boilers, swimming pools, spas and water wells, which must be subcontracted to an appropriately licensed contractor. The scope of work allowed under the CR-7 carpentry classification is included within this scope. This classification does not include work authorized by the A-, B-1, or B-2 scopes.

B-4 GENERAL RESIDENTIAL ENGINEERING CONTRACTOR
Construction and repair of appurtenances to residential structures. Work related to electrical, plumbing, air conditioning systems, boilers, and water wells must be subcontracted to an appropriately licensed contractor. This scope includes the CR-21, B-5, and all B-4R subclassifications.

B-4R Corrosion Control
B-4R Sport Court Accessories
B-4R Soil Stabilization

Upon the effective date of these rules, no new applications for the B-4R license classifications will be accepted and no new B-4R licenses will be issued.

B-5 GENERAL SWIMMING POOL CONTRACTOR
Construction and repair of swimming pools and spas. Installation of code-required pool barriers around the swimming pool or spa and installation of utilities from the point of service to the pool equipment. Construction of other structures or appurtenances is excluded. This scope includes all B-5R subclassifications.

B-5R Swimming Pool Covers
B-5R Fiberglassing of Swimming Pools
B-5R Reservoir Linings & Covers
B-5R Factory Fabricated Pools & Accessories

Upon the effective date of these rules, no new applications for the B-5R classifications will be accepted and no new B-5R licenses will be issued.

B-6 GENERAL SWIMMING POOL CONTRACTOR, INCLUDING SOLAR
The scope of work allowed in this classification is the same as B-5 (including all B-5R subclassifications) with the inclusion of solar heating devices.

B-10 PREMANUFACTURED SPAS AND HOT TUBS
Construction and repair of spas and hot tubs. Installation of code-required pool barriers around the spa or hot tub and installation of utilities from the point of service to the spa equipment are included.

R-2 EXCAVATING, GRADING AND OILSURFACING
This classification allows the licensee to apply oil surfacing or other similar products and place shoring, casing, geotextiles or liners as required for the licensee to move, alter, or repair earthen materials by:

1. Digging
2. Trenching
3. Grading
4. Horizontal boring
5. Compacting
6. Filling

R-4 BOILERS, INCLUDING SOLAR
Installation and repair of steam and hot water boilers.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel. This scope includes the C-4R subclassification.

R-4R Boilers

R-6 SWIMMING POOL SERVICE AND REPAIR
Service and minor repair of residential pools and accessories, excluding plumbing connections to a potable water system, gas lines, gas chlorine systems, and electrical work beyond the first disconnect. This classification does not include a complete replacement of plaster or pebble pool interiors and decks.

R-9 CONCRETE
Installation and repair of concrete, concrete products, and accessories common to the industry.

R-11 ELECTRICAL
Installation and repair of electrical systems.

R-13 ASPHALT PAVING
Installation and repair of paved areas using materials and methods common to the industry, including

asphalt curbs, concrete bumper curbs, headers, and striping.

R-16 FIRE PROTECTION SYSTEMS
Installation and repair of approved types of fire prevention and fire protection systems including all mechanical apparatus, devices, piping, low voltage signaling systems, and equipment common to the fire protection industry. Installation of all other electrical devices, apparatus, and wiring must be subcontracted to a properly licensed contractor.

R-17 STRUCTURAL STEEL AND ALUMINUM
Installation and repair of architectural and structural shapes and members common to the industry, including reinforcing steel which may be used as structural members for buildings, equipment, and structures.

R-22 HOUSE MOVING
Disconnection of utilities is permitted, but connection of utilities and construction of foundations are not.

R-37 PLUMBING, INCLUDING SOLAR
Installation and repair of water and gas piping systems, fire protection systems, and sewage treatment systems. Included are all fixtures, vents, and devices common to the industry, as well as solar applications. This scope includes all C-37R subclassifications.

R-37R Plumbing
R-37R Built-in Central Vacuum Systems
R-37R Kitchen and Bathroom Fixture Refinishing
R-37R Swimming Pool Plumbing and Equipment
R-37R Gas Piping
R-37R Sewers, Drains and Pipe Laying
R-37R Solar Plumbing Liquid Systems Only

Upon the effective date of these rules, no new applications for the R-37R Built-in Central Vacuum Systems, Kitchen and Bathroom Fixture Refinishing, Swimming Pool Plumbing and Equipment, Gas Piping, Sewers, Drains and Pipe Laying, and Solar Plumbing Liquid Systems Only license classifications will be accepted and no new R-37R licenses in these classifications will be issued.

R-39 AIR CONDITIONING AND REFRIGERATION, INCLUDING SOLAR
Installation and repair of comfort air conditioning systems, including refrigeration, evaporative cooling, ventilating, and heating with or without solar equipment. Installation and repair of machinery, units, accessories, refrigerator rooms, and insulated refrigerator spaces, and controls in refrigerators.

If necessary, a new circuit may be added to the existing service panel or sub-panel. Excluded is the installation of a new service panel or sub-panel. This scope includes all C-39R subclassifications.

R-39R Air Conditioning and Refrigeration
R-39R Gas Refrigeration
R-39R Temperature Control Systems
R-39R Warm Air Heating, Evaporative Cooling and Ventilating
R-39R Evaporative Cooling and Ventilators
R-39R Pre-Coolers

Upon the effective date of these rules, no new applications for the R-39R Gas Refrigeration, Temperature Control Systems, Warm Air Heating, Evaporative Cooling and Ventilating, Evaporative Cooling and Ventilators, and Pre-Coolers license classifications will be accepted and no new R-39R licenses in these classifications will be issued.

R-53 DRILLING
Installation and repair of wells, including test boring, exploratory drilling and all materials and devices common to the industry.

R-62 MINOR HOME IMPROVEMENTS
Remodeling, repairs, and improvements to existing structures or appurtenances not to exceed $5,000 for labor and materials per project per dwelling or appurtenance. The minor home improvement contractor shall not perform structural work to any existing structures or appurtenances, including load bearing masonry or concrete work (with the exception of on-grade flat work), and load bearing carpentry work (with the exception of patio or porch covers). All electrical, plumbing, air conditioning, heating, boiler, and roofing work shall be performed by an appropriately licensed contractor.

Historical Note

Former Rule 3. Amended effective May 20, 1975, Amended effective June 13, 1975, Amended effective August 8, 1975, Amended effective August 25, 1975 (Supp. 75-1). Amended effective January 9, 1976, subsection (B) of former Section R4-9-02 renumbered as Section R4-9-03 effective February 23, 1976 (Supp. 76-1). Amended effective March 11, 1976 (Supp. 76-2). Correction, Historical Note for Supp. 76-1 should read former Section R4-9-03 repealed, new Section R4-9-03 adopted effective February 23, 1975 (Supp. 76-4). Amended effective November 23, 1976 (Supp. 76-5). Amended effective October 14, 1977 (Supp. 77-5). C-4 and C-37 amended effective December 9, 1977 (Supp. 77-6). Correction, Historical Note for Supp. 76-4 should read former Section R4-9-03 repealed, new Section R4-9-03 adopted effective February 23, 1976 (Supp. 78-1). Amended effective September 13, 1978 (Supp. 78-5). Amended effective April 2, 1979 (Supp. 79-2). Amended effective November 21, 1979 (Supp. 79-6). Amended effective July 10, 1980 (Supp. 80-4). Amended effective July 11, 1980 (Supp. 80-4). Amended effective July 28, 1980 (Supp. 80-4). Amending effective August 15, 1980 (Supp. 80-4). Amended effective August 19, 1980 (Supp. 80-4). Amended effective September 5, 1980 (Supp. 80-5). Amended effective April 18, 1984 (Supp. 84-2). Former Section R4-9-03 renumbered without change as Section R4-9-103 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective January 20, 1998 (Supp. 98-1). Amended to correct typographical errors (Supp. 99-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-104. Dual Contractor License Classifications and Scopes of Work

A. Dual license contracting classifications. License classifications for dual contractors are as follows:

GENERAL DUAL ENGINEERING CONTRACTING

KA- Dual Engineering

KA-5 Dual Swimming Pool Contractor

KA-6 Dual Swimming Pool Contractor Including Solar

KE- (As restricted by Registrar)

GENERAL DUAL LICENSE CONTRACTING

KB-1 Dual Building Contractor

KB-2 Dual Residential and Small Commercial

KO- (As restricted by Registrar)

SPECIALTY DUAL LICENSE CONTRACTING

CR-1 Acoustical Systems

CR-2 Excavating, Grading and Oil Surfacing

CR-3 Awnings, Canopies, Carports and Patio Covers

CR-4 Boilers, Steamfitting and Process Piping

CR-5 (As restricted by Registrar)

CR-6 Swimming Pool Service and Repair

CR-7 Carpentry

CR-8 Floor Covering

CR-9 Concrete

CR-10 Drywall

CR-11 Electrical

CR-12 Elevators

CR-14 Fencing

CR-15 Blasting

CR-16 Fire Protection Systems

CR-17 Steel and Aluminum Erection

CR-21 Landscaping and Irrigation Systems

CR-24 Ornamental Metals

CR-29 Machinery (As restricted by Registrar)

CR-31 Masonry

CR-34 Painting and Wall Covering

CR-36 Plastering

CR-37 Plumbing

CR-38 Signs

CR-39 Air Conditioning, Refrigeration and Heating

CR-40 Insulation

CR-41 Septic Tanks and Systems

CR-42 Roofing

CR-45 Sheet Metal

CR-48 Ceramic, Plastic and Metal Tile

CR-53 Water Well Drilling

CR-54 Water Conditioning Equipment

CR-56 Welding

CR-57 Wrecking

CR-58 Comfort Heating, Ventilating, Evaporative Cooling

CR-60 Finish Carpentry

CR-61 Carpentry, Remodeling and Repairs

CR-62 Reinforcing Bar and Wire Mesh

CR-63 Appliances

CR-65 Glazing

CR-66 Seal Coating

CR-67 Low Voltage Communication Systems

CR-69 Asphalt Paving

CR-74 Boilers, Steamfitting and Process Piping, including Solar

CR-77 Plumbing including Solar

CR-78 Solar Plumbing Liquid Systems Only

CR-79 Air Conditioning and Refrigeration including Solar

CR-80 Sewers, Drains and Pipe Laying

B. Dual license contracting scopes. The scope of work which may be done under the dual license contracting classifications allow a contractor to combine commercial and residential contracting licenses in one license. These classifications are as follows:

KA- DUAL ENGINEERING
This classification allows the scope of work permitted by the commercial A- General Engineering and the B-4 General Residential Engineering licenses.

KA-5 DUAL SWIMMING POOL CONTRACTOR
This classification allows the scope of work permitted by the commercial A-9 Swimming Pools and the residential B-5 General Swimming Pool licenses.

KA-6 DUAL SWIMMING POOL CONTRACTOR INCLUDING SOLAR
This classification allows the scope of work permitted by the commercial A-19 Swimming Pools, Including Solar and the residential B-6 General Swimming Pools, Including Solar licenses.

KE- (AS RESTRICTED BY REGISTRAR)

KB-1 DUAL BUILDING CONTRACTOR
This classification allows the scope of work permitted by the B-1 General Commercial Contractor and the B- General Residential Contractor licenses.

KB-2 DUAL RESIDENTIAL AND SMALL COMMERCIAL
This classification allows the scope of work permitted by the B-2 General Small Commercial and the B- General Residential Contractor licenses.

KO- (AS RESTRICTED BY REGISTRAR)

CR-1 ACOUSTICAL SYSTEMS
This classification allows the licensee to install or repair pre-manufactured acoustical ceiling and wall systems.

This classification does not allow the licensee to install or repair electrical or mechanical systems.

CR-2 EXCAVATING, GRADING AND OIL SURFACING
This classification allows the scope of work permitted by the commercial A-5 Excavating, Grading, and Oil Surfacing and the residential R-2 Excavating, Grading, and Oil Surfacing licenses.

CR-3 AWNINGS, CANOPIES, CARPORTS AND PATIO COVERS

This classification allows the licensee to place concrete footings and concrete slabs as required for the licensee to install or repair:

1. Window awnings
2. Door hoods
3. Freestanding or attached canopies
4. Carport and patio covers constructed of metal, fabric, fiberglass, or plastic
5. Screened and paneled enclosures, which are not intended for use as habitable spaces, using metal panels, plastic inserts, and screen doors. A minimum of 60% of the wall area of an enclosure shall be constructed of screening material.
6. Fascia panels
7. Flashing and skirting
8. Exterior, detached metal storage units

This classification does not allow the licensee to install or repair electrical, plumbing, or air conditioning systems.

CR-4 BOILERS, STEAMFITTING AND PROCESS PIPING
This classification allows the scope of work permitted by the commercial C-4 Boilers, Steamfitting and Process Piping and the residential R-4R Boilers licenses.

CR-5 (AS RESTRICTED BY REGISTRAR)

CR-6 SWIMMING POOL SERVICE AND REPAIR
This classification allows the scope of work permitted by the commercial C-6 Swimming Pool Service and Repair and the residential R-6 Swimming Pool Service and Repair licenses.

CR-7 CARPENTRY
This classification allows the licensee to install or repair:

1. Rough carpentry
2. Finish carpentry
3. Hardware
4. Millwork
5. Metal studs
6. Metal doors or door frames

CR-8 FLOOR COVERING
This classification allows the licensee to prepare a surface as required for the licensee to install or repair the following floor covering materials:

1. Carpet
2. Floor tile
3. Wood
4. Linoleum
5. Vinyl
6. Asphalt
7. Rubber
8. Concrete coatings

CR-9 CONCRETE
This classification allows the scope of work permitted by the commercial C-9 Concrete and the residential R-9 Concrete licenses.

CR-10 DRYWALL
This classification allows the licensee to install or repair:

1. Gypsum wall board
2. Ceiling grid systems as supporting members for gypsum drywall
3. Movable partitions
4. Wall board tape and texture
5. Non-load bearing, lightweight, steel wall partitions

CR-11 ELECTRICAL
This classification allows the scope of work permitted by the commercial C-11 Electrical and residential R-11 Electrical licenses.

CR-12 ELEVATORS
This classification allows the licensee to install or repair:

1. Elevators
2. Dumbwaiters
3. Escalators
4. Moving walks and ramps
5. Stage and orchestra lifts

CR-14 FENCING
This classification allows the licensee to install or repair:

1. Metal, wood, and cement block fencing
2. Automatic gates
3. Fire access strobes
4. Highway guard rails
5. Cattle guards
6. Low voltage U.L. approved electrical fence protective devices of less than 25 volts and 100 watts

This classification does not allow the licensee to install or repair retaining walls.

CR-15 BLASTING
This classification allows the licensee to drill, bore, move earth, and build temporary shelters or barricades, as required for the licensee's use of explosives and explosive devices for:

1. Excavation
2. Demolition
3. Geological exploration
4. Mining
5. Construction related blasting

CR-16 FIRE PROTECTION SYSTEMS
This classification allows the scope of work permitted by the commercial C-16 Fire Protection Systems and the residential R-16 Fire Protection licenses.

CR-17 STEEL AND ALUMINUM ERECTION
This classification allows the scope of work permitted by the commercial A-11 Steel and Aluminum Erection and the residential R-17 Structural Steel and Aluminum licenses.

CR-21 LANDSCAPING AND IRRIGATION SYSTEMS
This classification allows the licensee to treat, condition, prepare, and install:

1. Topsoil
2. Plants and decorative vegetation
3. Non-loadbearing concrete
4. Uncovered patios, walkways, driveways made of brick, stone, pavers or gravel
5. Wooden decks no higher than 29 inches above finish grade
6. Decorative garden walls up to six feet from finish grade
7. Fences and screens up to six feet from finish grade

8. Retaining walls up to three feet from the finish grade of the lower elevation
9. Wood-burning fire pit no higher than 16 inches above finish grade
10. Low voltage landscape lighting
11. Water features that are not attached to swimming pools; including any necessary: electrical wiring of 120 volts or less, connection to potable water lines, backflow prevention devices, hose bibs, excavating, trenching, boring, backfilling, or grading
12. Irrigation systems, including any necessary: electrical wiring of 120 volts or less, connection to potable water lines, backflow prevention devices, hose bibs, excavating, trenching, boring, backfilling, or grading

This classification does not allow the licensee to install, contract for, or subcontract new electrical service panels, gas or plumbing lines, blasting, outdoor kitchens, gazebos, room additions, swimming pools, pool deck coatings, barbeques, concrete driveways, load bearing walls, or perimeter fencing.

CR-24 ORNAMENTAL METALS

This classification allows the licensee to fabricate, install, or repair non-structural ornamental metal, such as:

1. Metal folding gates
2. Guard and hand rails
3. Wrought iron fencing and gates
4. Window shutters and grilles
5. Room dividers and shields
6. Metal accessories common to the industry

This classification does not allow the licensee to install fire escapes and stairs.

CR-29 MACHINERY (AS RESTRICTED BY THE REGISTRAR)

CR-31 MASONRY

This classification allows the licensee to grout, caulk, sand blast, tuckpoint, mortar wash, parge, clean and weld reinforcing steel as required for the licensee to install or repair:

1. Masonry
2. Brick
3. Concrete block
4. Insulating concrete forms
5. Adobe units
6. Stone
7. Marble
8. Slate
9. Mortar-free masonry products

CR-34 PAINTING AND WALL COVERING

This classification allows the licensee to perform surface preparation, caulking, drywall patching, drywall taping, sanding, and cleaning as required for the licensee to install, apply or repair:

1. Wallpaper
2. Wall covering cloth
3. Wall covering vinyl
4. Decorative texture
5. Paint

CR-36 PLASTERING

This classification allows the licensee to install laths, metal studs, metal grid systems, or other bases as required for the licensee to coat surfaces by trowel or spray with combinations of:

1. Sand mixtures (e.g. stucco)
2. Gypsum plaster
3. Cement
4. Acoustical plaster
5. Swimming pool interiors (excluding tile)

CR-37 PLUMBING

This classification allows the scope of work permitted by the commercial C-37 Plumbing and the residential R-37R Plumbing licenses.

CR-38 SIGNS

This classification allows the licensee to install or repair posts, poles, supports, paint, and electrical wiring as required for the licensee to fabricate, install or repair:

1. Signs
2. Displays
3. Flagpoles

CR-39 AIR CONDITIONING AND REFRIGERATION

This classification allows the scope of work permitted by the commercial C-39 Air Conditioning and Refrigeration and the residential R-39R Air Conditioning and Refrigeration licenses.

CR-40 INSULATION

This classification allows the licensee to install supports, fastening systems, adhesives, mastics, or plastics as required for the licensee to install or repair:

1. Insulation materials
2. Preformed architectural acoustical materials
3. Insulation protecting materials

CR-41 SEPTIC TANKS AND SYSTEMS

This classification allows the licensee to excavate, install or repair pipe, backfill, and compact soil as required for the licensee to install or repair:

1. Septic tanks
2. Aerobic digesters
3. Leaching fields

CR-42 ROOFING

This classification allows the licensee to apply or install weatherproofing (i.e. asphaltum, pitch, tar, felt, glass fabric, or flax) or roof accessories (i.e. flashing, valleys, gravel stops, or sheet metal) as required for the licensee to install or repair:

1. Roof tile
2. Shingles
3. Shakes
4. Slate
5. Metal roofing systems
6. Urethane foam
7. Roof insulation or coatings on or above the roof deck

This classification allows the licensee to replace up to three sheets (96 square feet) of plywood on the roof substrate; and install new or replace existing skylights where it does not require changes to the roof framing or roof structure.

CR-45 SHEET METAL

This classification allows the licensee to cut, fabricate, install or repair:

1. Sheet metal

2. Cornices
3. Flashings
4. Gutters
5. Leaders
6. Pans
7. Kitchen equipment
8. Duct work
9. Skylights
10. Patented chimneys
11. Metal flues
12. Metal roofing systems

CR-48 CERAMIC, PLASTIC AND METAL TILE
This classification allows the licensee to prepare a surface as required for the licensee to install or repair the following tile products on horizontal and vertical surfaces:
1. Ceramic
2. Clay
3. Faience
4. Metal
5. Mosaic
6. Glass mosaic
7. Paver
8. Plastic
9. Quarry
10. Stone tiles such as marble or slate
11. Terrazzo

Installation of shower doors and tub enclosures are included when a part of the original contract.

CR-53 WATER WELL DRILLING
This classification allows the scope of work permitted by the commercial C-53 Water Well Drilling and the residential R-53 Drilling licenses.

CR-54 WATER CONDITIONING EQUIPMENT
This classification allows the licensee to perform trenching, backfilling, and grading; and install and repair piping, fittings, valves, concrete supports, and electrical control panels of less than 25 volts and required grounding devices; as required for the licensee to install or repair:
1. Water conditioning equipment
2. Misting systems
3. Exchange tanks
4. Indirect waste pipe carrying brine, backwash and rinse water to the point of disposal

CR-56 WELDING
This classification allows the licensee to weld metals.

CR-57 WRECKING
This classification allows the licensee to install or repair temporary ramps, barricades, and pedestrian walkways as required for the licensee to demolish, dismantle, or remove structures not intended for reuse. This classification does not allow the licensee to use explosives.

CR-58 COMFORT HEATING, VENTILATING, EVAPORATIVE COOLING
This classification allows the scope of work permitted by the commercial C-58 Comfort Heating, Ventilating, Evaporative Cooling and the residential R-39R Warm Air Heating, Evaporative Cooling, and Ventilating licenses.

CR-60 FINISH CARPENTRY
This classification allows the licensee to install or repair millwork such as:
1. Cabinets
2. Counter tops
3. Case sash
4. Door trim
5. Metal doors
6. Automatic door closers
7. Wood flooring

CR-61 CARPENTRY, REMODELING AND REPAIRS
For projects of $50,000 or less, this classification allows the licensee, on existing structures, to install or repair:
1. Rough carpentry
2. Finish carpentry
3. Roofing
4. Hardware
5. Millwork
6. Metal studs
7. Metal doors or door frames

Work related to electrical, plumbing, air conditioning systems, boilers, swimming pools, spas and water wells must be subcontracted to an appropriately licensed contractor.

CR-62 REINFORCING BAR AND WIRE MESH
This classification allows the licensee to install or repair:
1. Reinforcing bar
2. Post-tension
3. Wire mesh

CR-63 APPLIANCES
This classification allows the licensee to install and repair appliances. This classification does not allow the licensee to install or repair gas, electrical, or plumbing lines.

CR-65 GLAZING
This classification allows the licensee to install or repair weatherproofing, caulking, sealants, and adhesives as required for the licensee to assemble, install or repair:
1. Glass products
2. Window film
3. Window treatments
4. Steel and aluminum glass holding members

CR-66 SEAL COATING
This classification allows the scope of work permitted by the commercial A-15 Seal Coating and the residential R-13 Asphalt Paving licenses.

CR-67 LOW VOLTAGE COMMUNICATION SYSTEMS
This classification allows the licensee to build antenna towers on existing structures as required for the licensee to install, service or repair:
1. Alarm systems
2. Telephone systems
3. Sound systems
4. Intercommunication systems
5. Public addressing systems
6. Television or video systems
7. Low voltage signaling devices
8. Low voltage landscape lighting that does not exceed 91 volts
9. Master and program clocks (only low voltage wiring and needed equipment)

CR-69 ASPHALT PAVING
This classification allows the scope of work permitted by the commercial A-14 Asphalt Paving and the residential R-13 Asphalt Paving licenses.

CR-74 BOILERS, STEAMFITTING AND PROCESS PIPING, INCLUDING SOLAR
This classification allows the scope of work permitted by the commercial C-74 Boilers, Steamfitting and Process Piping, Including Solar and the residential R-4 Boilers Including Solar licenses.

CR-77 PLUMBING INCLUDING SOLAR
This classification allows the scope of work permitted by the commercial C-77 Plumbing Including Solar and the residential R-37 Plumbing Including Solar licenses.

CR-78 SOLAR PLUMBING LIQUID SYSTEMS ONLY
This classification allows the scope of work permitted by the commercial C-78 Solar Plumbing Liquid Systems Only and the residential R-37R Solar Plumbing Liquid Systems Only licenses.

CR-79 AIR CONDITIONING AND REFRIGERATION INCLUDING SOLAR
This classification allows the scope of work permitted by the commercial C-79 Air Conditioning and Refrigeration Including Solar and the residential R-39 Air Conditioning and Refrigeration Including Solar licenses.

CR-80 SEWERS, DRAINS AND PIPE LAYING
This classification allows the scope of work permitted by the commercial A-12 Sewers, Drains, and Pipe Laying and the residential R-37R Sewers, Drains and Pipe Laying licenses.

Historical Note

Former Section R4-9-04 repealed, new Section R4-9-04 adopted effective February 23, 1976 (Supp. 76-1). Amended effective April 18, 1984 (Supp. 84-2). Amended subsection (A) effective July 9, 1987 (Supp. 87-3). Former Section R4-9-04 renumbered as Section R4-9-104 (Supp. 87-3). Former Section R4-9-104 renumbered to R4-9-105 and amended; new Section R4-9-104 adopted effective January 20, 1998 (Supp. 98-1). Amended to correct typographical errors (Supp. 99-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-105. Restricted License Classifications

A. A restricted license is a specialty or general license that confines the scope of allowable contracting work to a specialized area of construction which the Registrar of Contractors grants on a case-by-case basis. The restricted licenses classifications are KE, KO, CR-5 or CR-29. The Registrar assigns a restricted license classification based upon the nature and complexity of the work, the degree of unusual expertise involved and the applicability of existing classifications to the specialized area of construction.

B. When applying for a restricted license classification an applicant, if requested, shall submit to the Registrar the following:
1. A detailed statement of the type and scope of contracting work that the applicant proposes to perform.
2. Any brochures, catalogs, photographs, diagrams, or other material, which the applicant has, that will further clarify the scope of the work that the applicant proposes to perform.

C. The Registrar shall determine the classification of the restricted license and notify the applicant of the classification. The applicant must then apply for the restricted license according to the Registrar of Contractor's application process in accordance with A.R.S. § 32-1122.

D. A contractor issued a restricted license shall confine the contractor's activities to the field and scope of operations as described in the license classification.

Historical Note

Former Section R4-9-05 repealed, new Section R4-9-05 adopted effective February 23, 1976 (Supp. 76-1). Amended effective July 9, 1987 (Supp. 87-3). Former Section R4-9-05 renumbered without change as Section R4-9-105 (Supp 87-3). Former Section R4-9-105 renumbered to R4-9-106 and amended; new Section R4-9-105 renumbered from R4-9-104 and amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-106. Examinations

A. Examinations are given weekly or more often as prescribed by the Registrar or the contracted vendor.

B. The applicant's qualifying party must take and pass the appropriate examination with a passing grade of at least 70% for each examination taken.

C. A person is allowed to retake a failed examination subject to the following limitations:
1. Waiting 30 calendar days after a first failed attempt,
2. Waiting 30 calendar days after a second failed attempt, and
3. Waiting 180 calendar days after the third and any subsequent failed attempts.

D. Pursuant to A.R.S. §§ 32-1122(A)(4) and 32-1122(F) the Registrar may decide a trade exam is not required where the qualifying party has been the qualifying party within the preceding five years for a license in good standing in the same classification in this state, or a classification the Registrar deems comparable in another state.

Historical Note

New Section R4-9-106 renumbered from R4-9-105 and amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-107. Classifying and Reclassifying Contractor Licenses

A. In accordance with A.R.S § 32-1105 and 32-1122, the Registrar may establish, add to, take away from, or eliminate license classifications.

B. Where a license classification is eliminated, but the Registrar determines a comparable license classification remains, the Registrar shall reclassify the eliminated licenses with the remaining license classification.

C. The following license reclassifications are effective July 1, 2014.

Prior License	New License
A-3 Blasting	CR-15 Blasting
C-15 Blasting	

A-21 Landscaping and Irrigation Systems	CR-21 Landscaping and Irrigation Systems
L-26 Landscaping	
L-44 Irrigation Systems	
C-21 Landscaping and Irrigation Systems	
C-21R Landscaping	
C-21R Irrigation Systems	
K-26 Landscaping	
K-44 Irrigation Systems	
AE (As Restricted by the Registrar)	KE (As Restricted by the Registrar)
BE (As Restricted by the Registrar)	KO (As Restricted by the Registrar)
L-1 Acoustical Systems	CR-1 Acoustical Systems
C-1 Acoustical Systems	
L-3 Awnings, Canopies, Carports and Patio Covers	CR-3 Awnings, Canopies, Carports and Patio Covers
C-3 Awnings and Canopies	
L-5 (As Restricted by the Registrar)	CR-5 (As Restricted by the Registrar)
C-5 (As Restricted by the Registrar)	
L-7 Carpentry	CR-7 Carpentry
C-7 Carpentry	
C-7R Doors, Gates, Windows and Accessories	
C-7R Removable Formwork and Shoring	
C-7R Nailing and Stapling	
L-8 Floor Covering	CR-8 Floor Covering
L-13 Carpets	
L-64 Wood Floor Laying and Finishing	
C-8 Floor Covering	
C-8R Wood Flooring	
C-8R Carpet	
C-8R Composition Flooring	
C-8R Nonconventional Floor Covering	
C-8R Ceramic and Clay Floor Covering	
K-13 Carpet	
K-64 Wood Floor Laying and Finishing	
C-9R Gunite and Shotcrete	R-9 Concrete
C-9R Lightweight Concrete	
C-9R Fence Footings	
C-9R PreCast Concrete	
C-9R Sawing, Coring, Epoxy Panels and Bonding	
C-9R Terrazzo	
L-10 Drywall	CR-10 Drywall
C-10 Drywall	

L-12 Elevators	CR-12 Elevators
C-18 Elevators	
C-13R Asphalt Coating and Parking Appurtenances	R-13 Asphalt Paving
L-14 Fencing	CR-14 Fencing
C-14 Fencing	
C-14R Fencing Other Than Masonry	
C-16R CO2, Dry and Wet Chemical Systems	R-16 Fire Protection Systems
L-24 Ornamental Metals	CR-24 Ornamental Metals
C-17R Ornamental Metals	
C-17R Steel Floor, Sub Floor and Form Systems	R-17 Structural Steel and Aluminum
C-17R Tanks	
C-17R Recreational Equipment	
L-29 Machinery (As Restricted by the Registrar)	CR-29 Machinery (As Restricted by the Registrar)
C-29 Machinery (As Restricted by the Registrar)	
L-31 Masonry	CR-31 Masonry
C-31 Masonry	
C-31R Flagstone	
C-31R Stone Masonry	
L-34 Painting and Wall Covering	CR-34 Painting and Wall Covering
C-34 Painting and Wall Covering	
C-34R Surface Preparation and Waterproofing	
C-34R Wallpaper	
L-36 Plastering	CR-36 Plastering
C-36 Plastering	
C-36R Swimming Pool Plastering	
C-36R Lathing	
L-38 Sign	CR-38 Signs
C-38 Signs	
L-40 Insulation	CR-40 Insulation
C-40 Insulation	
C-40R Foam Insulation	
L-41 Septic Tanks and Systems	CR-41 Septic Tanks and Systems
C-41 Sewage Treatment Systems	
C-41R Precast Waste Treatment Systems	
L-42 Roofing	CR-42 Roofing
C-42 Roofing	
C-42R Foam and Foam Panel Roofing	
C-42R Liquid Applied Roofing	
C-42R Roofing Shingles and Shakes	
L-45 Sheet Metal	CR-45 Sheet Metal
C-45 Sheet Metal	
C-45R Premanufactured Fire Places	

L-48 Ceramic, Plastic and Metal Tile	CR-48 Ceramic, Plastic and Metal Tile
C-48 Ceramic, Plastic and Metal Tile	
C-48R Swimming Pool Tile	
L-54 Water Conditioning Equipment	CR-54 Water Conditioning Equipment
C-37R Water Conditioning Equipment	
L-56 Welding	CR-56 Welding
C-17R Welding	
L-57 Wrecking	CR-57 Wrecking
C-22R Wrecking	
L-60 Finish Carpentry	CR-60 Finish Carpentry
C-30 Finish Carpentry	
C-30R Kitchen and Bathroom Components	
C-30R Doors, Windows, Gates, Tub and Shower Enclosures	
C-30R Cultured Marble	
C-30R Weatherstripping	
L-61 Carpentry, Remodeling and Repairs	CR-61 Carpentry, Remodeling and Repairs
C-61 Limited Remodeling and Repair Contractor	
C-68 Mobile Home Remodeling and Repair	
L-62 Reinforcing Bar and Wire Mesh	CR-62 Reinforcing Bar and Wire Mesh
C-17R Rebar and Wire Mesh	
L-63 Appliances	CR-63 Appliances
C-63 Appliances	
L-65 Glazing	CR-65 Glazing
C-65 Glazing	
C-65R Skylights	
C-65R Storm Windows and Doors	
C-65R Mirrors	
C-65R Window Treatment	
L-67 Low Voltage Communications Systems	CR-67 Low Voltage Communication Systems
C-12 Low Voltage Communication Systems	

Historical Note

Former Rule 7. Former Section R4-9-07 repealed, new Section R4-9-07 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-07 repealed, new Section R4-9-07 adopted effective April 18, 1984 (Supp. 84-2). Former Section R4-9-07 renumbered without change as Section R4-9-107 (Supp 87-3). Repealed effective October 22, 1992 (Supp. 92-4). New Section R4-9-107 made by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-108. Minimum Construction Standards

A. A contractor shall perform all work in a professional manner.

B. A contractor shall perform all work in accordance with any applicable building codes and professional industry standards. For work to be performed in accordance with professional industry standards, a contractor shall use such skills, prudence, and diligence in performing and completing tasks undertaken that the completed work meets the standards of a similarly licensed contractor possessing ordinary skill and capacity.

C. All work performed by a contractor in a county, city, or town that has not adopted building codes or where any adopted building codes do not contain specific provisions applicable to that aspect of construction work shall be performed in accordance with professional industry standards.

Historical Note

Former Rule 8. Former Section R4-9-08 repealed, new Section R4-9-08 adopted effective February 23, 1976 (Supp. 76-1). Amended effective October 18, 1979 (Supp. 79-5). Amended subsection (C) effective April 23, 1981 (Supp. 81-2). Amended subsection (C) effective April 18, 1984 (Supp. 84-2). Former Section R4-9-08 renumbered without change as Section R4-9-108 (Supp. 87-3). Amended effective April 20, 1993 (Supp. 93-2). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 9 A.A.R. 5028, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-109. Name of Licensee or Applicant

A. A licensee shall do business under the name on the license issued and ensure that the same name is used on the license bond.

B. If a corporation is doing business in the name of a division or using a trade name, the corporation shall ensure that all names are shown on any application.

C. If applying for a license or a name change, a corporation shall submit written evidence that it is in good standing or that the new name has been filed with the Arizona Corporation Commission.

D. The Registrar shall grant a request for name change if there is no change in the legal entity, the name is available, and the request is submitted in writing, together with the required license fee and a cash deposit or bond rider that reflects the name change.

E. The Registrar may elect to reject an application, refuse to issue a license, or deny the name change of an existing license, based on a review of whether the proposed name is identical or so similar to that of an existing licensee or license applicant that it may cause confusion.

F. The Registrar shall not accept an application or issue a license if it contains the name of a building trade or craft for which the contractor is not qualified.

Historical Note

Former Rule 9. Former Section R4-9-09 repealed, new Section R4-9-09 adopted effective February 23, 1976 (Supp. 76-1). Amended effective September 27, 1976 (Supp. 76-4). Amended subsections (B), (C), and (D) effective April 18, 1984 (Supp. 84-2). Former Section R4-9-09 renumbered without change as Section R4-9-109 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4).

R4-9-110. Change of Legal Entity and Cancellation of License

A. Pursuant to A.R.S. § 32-1124, licenses are nontransferable. A new license is required whenever the licensee's legal entity changes. A change in legal entity includes, but is not limited to:

1. Changes in ownership of a sole proprietorship;

2. Change of a controlling partner in a partnership;
3. Changing from one corporate entity to a different corporate entity;
4. Changing business entities, regardless of whether ownership changes, (e.g. from a corporation or a sole proprietor to a limited liability company); or
5. Merging with another business, where the business holding the license becomes the inactive business after the merger.

B. A license may be cancelled upon the written request of the owner of a sole proprietorship, a controlling partner of a partnership, or in the case of a corporation or a limited liability company any person with written evidence of authority to cancel the license.

Historical Note

Former Rule 10. Former Section R4-9-10 repealed, new Section R4-9-10 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-10 renumbered without change as Section R4-9-110 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-111. Repealed

Historical Note

Former Rule 11. Former Section R4-9-11 repealed effective February 23, 1976 (Supp. 76-1). Adopted effective July 26, 1976 (Supp. 76-4). Amended effective April 18, 1979 (Supp. 84-2). Correction: Previous Historical Note should read: "Amended effective April 18, 1984"; Former Section R4-9-11 renumbered without change as Section R4-9-111 (Supp. 87-3). Repealed effective January 20, 1998 (Supp. 98-1).

R4-9-112. Bond Limits; Applications; Renewals; Increases and Decreases of Bond Amounts; Effective Date of Bond and Deposits

A. Bond limits. In accordance with the provisions of A.R.S. § 32-1152, license bonds are established in the following amounts, based upon the estimated annual volume of work anticipated by the contractor within the State of Arizona for the ensuing fiscal year:

License Category	Estimated Annual Volume (Per License Category)	Bond Amount
1. General Commercial Contracting and Engineering Contracting	Less than $150,000	$5,000
	$150,000 or more, but less than $500,000	$15,000
	$500,000 or more, but less than $1,000,000	$25,000
	$1,000,000 or more, but less than $5,000,000	$50,000
	$5,000,000 or more, but less than $10,000,000	$75,000
	$10,000,000 or more	$100,000
2. Specialty Commercial Contracting	Less than $150,000	$2,500
	$150,000 or more, but less than $500,000	$7,000
	$500,000 or more, but less than $1,000,000	$17,500
	$1,000,000 or more, but less than $5,000,000	$25,000
	$5,000,000 or more, but less than $10,000,000	$37,500
	$10,000,000 or more	$50,000
3. General Residential Contracting		
	Less than $750,000	$9,000
	$750,000 or more	$15,000
4. Specialty Residential Contracting		
	Less than $375,000	$4,250
	$375,000 or more	$7,500

5. General Dual License Contracting. The amount of a General Dual License Contracting bond is determined under subsection (A)(3), based on the contractor's estimated volume of general residential contracting, and subsection (A)(1), based on the contractor's estimated volume of general commercial contracting. The contractor shall ensure that the bond issuer separately specifies on the bond the bond amounts applicable to general residential contracting and general commercial contracting.
6. Specialty Dual License Contracting. The amount of a Specialty Dual license Contracting bond is determined under subsection (A)(4), based on the contractor's estimated volume of specialty residential contracting, and subsection (A)(2), based on the contractor's estimated volume of specialty commercial contracting. The contractor shall ensure that the bond issuer separately specifies on the bond the bond amounts applicable to specialty residential contracting and specialty commercial contracting.

B. New licenses. On an application for a new license for any license category listed above, an applicant shall estimate the applicant's annual volume of work within the state of Arizona and comply with the bond requirements of this Section for the relevant category of license. The Registrar considers the filing of a bond or deposit in a specified amount to be the equivalent of submitting a volume estimate within the dollar limitations applicable for the bond amount.

C. Renewal. To renew a license an applicant shall complete a form provided by the Registrar of Contractors. If the contractor files a new bond or continues a bond or deposit in a specified amount, the Registrar considers these actions to be the equivalent of submitting a volume estimate within the dollar

limitations applicable for the bond amount. The Registrar of Contractors is not responsible for over or under estimates of volume of work made by the licensee or for the sufficiency of any bond or deposit. The Registrar considers a gross underestimate knowingly made by a licensee to be a material misrepresentation, which can subject the licensee to suspension or revocation of license.

D. Increases and decreases of bond amounts. Based on the actual amount of the contractor's gross volume of work, a contractor may increase the bond amount at any time. A surety bond or cash deposit in lieu of a bond cannot be decreased except at the time of license renewal.

E. Effective date of bonds and deposits. A license bond or cash deposit is not effective until the licensee files it at a Registrar of Contractors office. If a license bond is filed before the effective date indicated on the bond, the bond becomes effective on the indicated date.

F. The changes to bond amounts made in this Section become enforceable on the next license renewal after June 30, 2014.

Historical Note

Former Rule 12. Former Section R4-9-12 repealed, new Section R4-9-12 adopted effective February 23, 1976 (Supp. 76-1). Amended effective October 17, 1978 (Supp. 78-5). Amended subsection (C) effective August 15, 1980 (Supp. 80-4). Amended subsections (A), (B), and (C) effective July 9, 1987; former Section R4-9-12 renumbered as Section R4-9-112 (Supp. 87-3). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-113. Application Process

A. In accordance with the provisions of A.R.S. § 32-1122 an applicant for licensure shall submit a verified application on form prescribed by the Registrar of Contractors.

B. For the purposes of A.R.S. § 41-1073, the Registrar establishes the following time-frames for the issuance of a contractor license.

1. Administrative completeness review time-frame: 40 calendar days
2. Substantive review time-frame: 20 calendar days
3. Overall agency time-frame: 60 calendar days

C. During the administrative completeness review time-frame the Registrar shall review an application for administrative completeness and either issue the license or mail a written notice of completeness or deficiencies within 40 days from the date of receipt. If deficiencies are found in the application, the Registrar shall mail the applicant a written notice containing a comprehensive list of the specific deficiencies. The 40-day time-frame for the Registrar to finish the review for completeness shall be suspended from the date the notice of deficiencies is mailed until the Registrar receives all requested information.

D. During the substantive review time-frame the Registrar shall complete a substantive review of the applicant's qualifications and grant, deny, or mail a final comprehensive notice of deficiencies within 20 days after expiration of the administrative completeness review time-frame. If the Registrar finds deficiencies during the substantive review of the application, the Registrar shall mail one final comprehensive request for additional information to the applicant. The 20 day time-frame for the Registrar to finish the substantive review shall be suspended from the date the request for additional information is mailed until the Registrar receives all requested information.

E. Compliance with the administrative completeness review, substantive review and overall time-frames:

1. By mutual agreement, an applicant and the Registrar may agree to extend the substantive review and overall time-frames by 15 calendar days.
2. The Registrar may return an application if it does not receive the information it requests during the administrative completeness review or substantive review periods within 30 calendar days from the date the registrar mailed the request for additional information. The return of a license application shall result in the forfeiture of the application fee, but all other license fees shall be returned to the applicant. An applicant shall pay an application fee each time it submits a returned license application.

F. For the purpose of this Section, 1st-class mail sent to the address on the application shall serve as legal notice.

G. In computing any period of time prescribed or allowed by this Section, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

H. Notwithstanding any provisions of this Section the applicant may apply to the Registrar in writing to withdraw a license application. The withdrawal of a license application shall result in the forfeiture of the application processing fee, but all other license fees shall be returned to the applicant.

Historical Note

Adopted effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-114. Reserved

R4-9-115. Posting

A. The Registrar shall not issue a license until expiration of the posting period in A.R.S. § 32-1104(C).

B. The Registrar may waive part of the posting period for applicants and personnel of applicants who have previously undergone the 20-day posting period.

C. The Registrar may increase the posting period beyond 20 days, but no more than 60 days for applicants who have been on a license that was disciplined.

D. Posting shall be done on the Registrar's web site.

Historical Note

Former Rule 15. Former Section R4-9-15 repealed, new Section R4-9-15 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-15 renumbered without change as Section R4-9-115 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-116. License Renewal

A. To renew a license, a licensee shall submit the following information to the Registrar and advise the Registrar of any change in the information within 30 days of the change:

1. If the licensee is a corporation or a limited liability company, evidence that the entity is in good standing with the Arizona Corporation Commission.
2. The licensee's current privilege license number, issued under A.R.S. § 42-5005.

B. A licensee shall renew each license on or before the renewal date. Failure to comply results in suspension of the license on the day following the renewal date by operation of law. The Registrar shall collect a $50.00 late fee if renewal is completed after the renewal date. Based on the severity of the violation, the Registrar may refuse to renew a license after determining

that a licensee has committed or been found guilty of any act listed in A.R.S. § 32-1154(A).

C. To renew a contracting license, a licensee shall submit an application for renewal to the Registrar, accompanied by the required renewal fee. Timely submission of an application is evidenced by the date stamped on the documents by the Registrar or the date on "postage prepaid" documents if the submission is deposited in the United States mail, postage prepaid, on or before the renewal date. Timely submission authorizes the licensee to operate as a contractor until actual issuance of the renewal license.

D. If a license has been suspended by operation of law for failure to renew, a licensee may still renew the license within one year of its suspension by submitting an application for renewal and paying the applicable renewal fee and a $50.00 late fee. If a license has been suspended for one or more years for failure to renew, the license shall expire and the former licensee must submit an application for a new license.

Historical Note

Former Rule 16. Former Section R4-9-16 repealed, new Section R4-9-16 adopted effective February 23, 1976 (Supp. 76-1). Amended effective October 14, 1977 (Supp. 77-5). Amended effective October 26, 1978 (Supp. 78-5). Amended effective April 18, 1984 (Supp. 84-2). Former Section R4-9-16 renumbered without change as Section R4-9-116 (Supp. 87-3). Amended by final rulemaking at 10 A.A.R. 5185, effective February 5, 2005 (04-4). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-117. Prior Record

In any disciplinary proceeding the Administrative Law Judge and the Registrar may consider the licensee's entire license file including the record of prior warning letters, complaints, cease and desist orders, citations and final administrative decisions or orders, or both.

Historical Note

Former Rule 17. Former Section R4-9-17 repealed, new Section R4-9-17 adopted effective February 23, 1976 (Supp. 76-1). Former Section R4-9-17 renumbered without change as Section R4-9-117 (Supp. 87-3). Amended by final rulemaking at 9 A.A.R. 3182, effective August 30, 2003 (Supp. 03-3). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-118. Reserved

R4-9-119. Reserved

R4-9-120. Rehearing or Review of Decision

A. The Registrar of Contractors shall provide an opportunity for a rehearing or review of its decisions on a hearing under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.

B. Except as provided in subsection (F), any party who is aggrieved by the decision on a hearing in a contested case or appealable agency action before the Registrar of Contractors may file with the Registrar of Contractors a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review.

C. The Registrar of Contractors may grant a rehearing or review of a decision for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the proceedings of the Registrar of Contractors or the Administrative Law Judge, or any order or abuse of discretion that deprived the moving party of a fair hearing;
2. Misconduct of the Registrar of Contractors, Office of Administrative Hearings, Administrative Law Judge, or 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 or insufficient penalties;
6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing or during the progress of the proceeding; or
7. The decision is not justified by the evidence or is contrary to law.

D. The Registrar of Contractors may affirm or modify a decision on a hearing or grant a rehearing or review to all or any of the parties on all or part of the issues for any of the reasons in subsection (C). After giving the parties notice and an opportunity to be heard, the Registrar of Contractors may grant a motion for rehearing for a reason not stated in the motion. An order modifying a decision or granting a rehearing shall specify the particular ground for the order. A rehearing shall cover only the matter specified in the order.

E. Not later than 35 days after the date of a decision, and after giving the parties notice and an opportunity to be heard, the Registrar of Contractors may, on its own initiative, order a rehearing or review of its decision on a hearing for any reason for which it might have granted relief on motion of a party.

F. If the Registrar of Contractors makes a specific finding that the immediate effectiveness of a decision on a hearing is necessary for the preservation of the public health, safety, or welfare and that a rehearing or review of the decision on a hearing is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision on a hearing is issued as a final decision without an opportunity for review or rehearing, an application for judicial review of the decision may be made within the time limits permitted for applications for judicial review of the Registrar of Contractors' final decisions.

G. For purposes of this Section the terms "contested case" and "party" have the same meanings as in A.R.S. § 41-1001.

H. To the extent that the provisions of this Section are in conflict with the provisions of any statute providing for review or rehearing of a decision of the Registrar of Contractors, the statutory provisions govern.

Historical Note

Former Rule 20. Repealed effective February 23, 1976 (Supp. 76-1). New Section R4-9-20 adopted effective June 18, 1982 (Supp. 82-3). Former Section R4-9-20 renumbered without change as Section R4-9-120 (Supp. 87-3). Amended by final rulemaking at 9 A.A.R. 1350, effective June 6, 2003 (Supp. 03-2). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-121. Unauthorized Communications

A. The purpose of this rule is to assist the Registrar of Contractors and its employees in avoiding the possibility of prejudice, real or apparent, in proceedings before the Registrar.

B. The provisions of this rule apply in the following contested proceedings: after a letter is issued denying a license application or a license renewal, a citation is issued, or an order is issued denying or reducing the amount of a recovery fund claim.

C. Prohibitions:

1. A person shall not make or cause to be made an oral or written communication, not on the public record, concerning the substantive merits of a contested proceeding to the Registrar or an employee involved in the decision-making process for that proceeding.
2. Neither the Registrar nor its employees who are involved in the decision-making process of a contested proceeding shall make, request, entertain, or consider an unauthorized communication concerning the merits of the proceeding.
3. The provisions of this rule do not prohibit:
   a. Communications regarding procedural matters;
   b. Communications regarding any other proceedings;
   c. Intra-agency or non-party communications regarding purely technical and legal matters;
   d. Communications among hearing officers, non-party staff and the Registrar.

D. Remedy:
1. The Registrar and its decision-making employees who receive an oral or written offer of any communication prohibited by this rule shall decline to receive such communication and explain that the matter is pending for determination and that all communication regarding it must be made on the public record. If unsuccessful in preventing such communications, the recipient shall advise the communicator that the communication will not be considered, a brief signed statement setting forth the substance of the communication and the circumstances under which it was made will be prepared, and the statement will be filed in the public record of the case or proceeding.
2. Any person affected by an unauthorized communication will have an opportunity to rebut on the record any facts or contentions contained in the communication.
3. If a party to a contested proceeding makes or causes to be made an unauthorized communication, the party may be required to show cause why its claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

Historical Note

Repealed effective February 23, 1976 (Supp. 76-1). New Section R4-9-21 adopted effective April 18, 1984 (Supp. 84-2). Amended effective July 9, 1987; former Section R4-9-21 renumbered as Section R4-9-121 (Supp. 87-3). Amended effective February 4, 1993 (Supp. 93-1). Repealed by final rulemaking at 9 A.A.R. 3182, effective August 30, 2003 (Supp. 03-3). New Section R4-9-121 made by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-122. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-123. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-124. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-125. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-126. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-127. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-128. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-129. Repealed

Historical Note

Adopted effective November 4, 1992 (Supp. 92-4). Repealed effective December 17, 1993 (Supp. 93-4).

R4-9-130. Schedule of Fees

An applicant shall submit a separate application for each classification of license. The following application fees, biennial license fees, biennial license renewal fees and fees for other services shall be applicable in accordance with the provisions of A.R.S. §§ 32-1123.01, 32-1126 and 32-1132. The fee for an annual license granted pursuant to A.R.S. § 32-1123.01, as an exception to the biennial license renewal requirement, shall be one-half of the fee for the biennial license renewal.

Classification of License	*Application Processing Fee*	*Fee for Each Biennial License*	*Fee for Each Biennial License Renewal*
1. COMMERCIAL CONTRACTING			
a. General Commercial Contracting (Includes all A and B Commercial classifications)	$200	$580	$580
b. Specialty Commercial Contracting (Includes all C classifications)	$100	$480	$480
2. RESIDENTIAL CONTRACTING			
a. General Residential Contracting (Includes all B Residential classifications)	$180	$320	$320
b. Specialty Residential Contracting (Includes all R classifications)	$80	$270	$270
3. GENERAL DUAL LICENSED CONTRACTING			

General Dual Licensed Contracting (Includes all KA, KB, KE and KO classifications)	$200	$480	$480
4. SPECIALTY DUAL LICENSE CONTRACTING			
Class CR	$100	$380	$380
5. PARTICIPATION IN RECOVERY FUND			
Recovery Fund Assessment		$370	$270
6. FEES FOR OTHER SERVICES			
a. Application to change qualifying party		$100	
b. Application to change name of licensee		$30	

Historical Note

Adopted effective February 4, 1993 (Supp. 93-1). Amended effective January 20, 1998 (Supp. 98-1). Amended by final rulemaking at 7 A.A.R. 3160, effective July 2, 2001 (Supp. 01-3). Amended by final rulemaking at 20 A.A.R. 568, effective July 1, 2014 (Supp. 14-1).

R4-9-131. Assessment of Civil Penalties

In assessing a civil penalty as provided for under A.R.S. § 32-1166(A), the Registrar shall give due consideration to whether the person cited or any individual acting on that person's behalf has committed one or more of the following acts in determining the gravity of the cited violation:

1. Falsely represented to be a licensed contractor.
2. Failed to perform any work for which money was received.
3. Executed or used any false or misleading documents for the purpose of inducing a person to enter into a contract or to pay money for work to be performed.
4. Made false or misleading statements for the purpose of inducing a person to enter into a contract or to pay money for work to be performed.
5. Failed or neglected to apply funds which were received for the purpose of obtaining or paying for services, labor, materials, or equipment.
6. Performed work that was or had the potential to become hazardous to the health, safety, or general welfare of the public.
7. Performed work that deliberately was in violation of building codes, safety laws, labor laws, workers' compensation laws, or unemployment insurance laws.
8. Performed work that failed to meet minimum acceptable trade or industry standards or practices or was not performed in a good and workmanlike manner.
9. Has committed any other act which would otherwise be cause for disciplinary action if the person cited had been properly licensed pursuant to A.R.S. Title 32, Chapter 10.
10. Has committed two or more prior violations.
11. Performed work that has caused loss or damage to the structure, its appurtenances, or property being worked upon or has caused loss or injury to any person.

Historical Note

Adopted effective May 26, 1994 (Supp. 94-2).

32-1104. Powers and duties

A. The registrar, in addition to other duties and rights provided for in this chapter, shall:

1. Maintain an office in Phoenix and in such other cities and towns in the state as the registrar deems advisable and necessary.

2. Maintain a complete indexed record of all applications and licenses issued, renewed, terminated, cancelled, revoked or suspended under this chapter, including timely notation of any judicial disposition on appeal, for a period of not less than seven years.

3. Furnish a certified copy of any license issued or an affidavit that no license exists or that a license has been cancelled or suspended including information as to the status on appeal of such cancellation or suspension, upon receipt of the prescribed fee, and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein. The registrar shall also furnish certified copies of license bonds or cash deposit certificates upon receipt of the prescribed fee. Fees charged pursuant to this paragraph shall be at a rate of ten dollars per hour, except that the minimum fee charged pursuant to this paragraph shall be ten dollars.

4. Employ such deputies, investigators and assistants subject to title 41, chapter 4, article 4, and procure such equipment and records, as are necessary to enforce this chapter. With respect to the enforcement of section 32-1164, the registrar or the registrar's investigators are vested with the authority to issue a citation to any violators of this chapter in accordance with section 13-3903. When the registrar or the registrar's investigators conduct investigations they are authorized to receive criminal history record information from the department of public safety and other law enforcement agencies.

5. Make rules the registrar deems necessary to effectually carry out the provisions and intent of this chapter. Such rules shall include the adoption of minimum standards for good and workmanlike construction. In the adoption of such rules of minimum standards, the registrar shall be guided by established usage and procedure as found in the construction business in this state. If the rules of minimum standards adopted by the registrar are in any manner inconsistent with a building or other code of the state, a county, city or other political subdivision or local authority of the state, compliance with such code shall constitute good and workmanlike construction for the purposes of this chapter.

6. Apply the following to proposed rule changes:

(a) The registrar of contractors, at the time the registrar files notice of proposed rule change with the secretary of state in compliance with title 41, chapter 6, shall mail to each trade association that qualifies in accordance with subdivision (b), and any other individual holding a bona fide contractor's license who qualifies in accordance with subdivision (b), a copy of the notice of proposed rule change.

(b) Every trade association in this state allied with the contracting business that files a written request that a notice be mailed to it and shows that the association has an interest in the rules of the registrar of contractors shall receive a copy thereof, as set forth in subdivision (a). Such filing of a request shall be made every two years during the month of January, and it shall contain information as to the nature of the association and its mailing address. Any duly licensed contractor who files a written request shall receive a copy of the proposed rule changes in accordance with this paragraph. Each such request shall be made every two years during the month of January.

7. Prepare and furnish decals and business management books when deemed advisable by the registrar. A reasonable fee may be charged for such decals and business management books.

8. Refer criminal violations of this chapter committed by persons previously named on a license which has been revoked to the appropriate law enforcement agency or prosecuting authority.

B. The registrar may develop and institute programs to do any of the following:

1. Educate the public and contractors licensed pursuant to this chapter regarding statutes, rules, policies and operations of the agency.

2. Assist in the resolution of disputes in an informal process before a reportable written complaint is filed. The registrar shall notify the licensed contractor in an alleged dispute before a written complaint is filed and allow the contractor the opportunity to be present at any inspection regarding the alleged dispute. The registrar shall give the contractor at least five days' notice before the inspection. Issues in the alleged dispute under this section shall not be limited in number and shall not be considered formal written complaints. The homeowner reserves the right to deny access to the contractor under this informal complaint process. The registrar shall notify the contractor and the homeowner in writing of the registrar's findings within five days after the date of the inspection. The registrar shall not post any information regarding the informal complaint process as part of a licensee's record on the registrar's web site.

3. Develop, manage, operate and sponsor construction related programs designed to benefit the public in conjunction with other private and public entities.

C. The registrar may adopt rules for the posting of names of applicants and personnel of applicants for contractors' licenses and furnish copies of such posting lists upon written request. The name and address of the applicant, together with the names and addresses and official capacity of all persons associated with the applicant who have signed the application, shall be publicly posted in the place and manner to be prescribed by the registrar for a period of not less than twenty days, except as otherwise provided in this subsection, commencing on the day designated by the registrar of contractors. The registrar may waive a part of the posting period when the records reflect that the applicant or qualifying party has previously undergone the twenty day posting for a previous license. A reasonable charge of not to exceed two dollars per month may be made for compilation, printing and postage for such posting lists.

D. The registrar may accept voluntary gifts, grants or matching monies from public agencies or enterprises for the conduct of programs that are authorized by this section or that are consistent with the purpose of this chapter.

32-1105. Rule making powers for purposes of classifying and reclassifying contractors

A. The registrar may adopt rules necessary to effect the classification of contractors in a manner consistent with established usage and procedure as found in the construction business, and may limit the field and scope of operations of a licensed contractor within any of the branches of the contracting business, as described in this chapter, to those divisions thereof in which the contractor is classified and qualified to engage.

B. The registrar shall establish by rule license classifications for dual licensed contractors. A contractor classified as a dual licensed contractor may perform equivalent construction work on both commercial and residential projects under a single license. The registrar shall adopt rules necessary to establish the scope of work that may be done under the dual license classifications.

C. A licensee may apply for classification and be classified in more than one classification or division thereof after the licensee meets the qualifications prescribed by the registrar for such additional classification or classifications. A single form of application shall be adopted for all licenses issued by the registrar.

D. Nothing in this chapter shall prohibit a specialty contractor from taking and executing a contract involving the use of two or more crafts or trades if the performance of the work in the crafts or trades other than those in which the specialty contractor is licensed is incidental and supplemental to the performance of work in the craft for which the specialty contractor is licensed.

32-1122. Qualifications for license

A. A contractor's license shall be issued only by act of the registrar of contractors. The registrar shall:

1. Classify and qualify applicants for a license.

2. If necessary, change the license classification of a licensee in the case of a title reclassification, with or without a bond rider for the purpose of continuing liability on the bond.

3. Conduct investigations the registrar deems necessary.

4. Establish written examinations if deemed necessary to protect the health and safety of the public.

B. To obtain or renew a license under this chapter, the applicant shall:

1. Submit to the registrar of contractors a verified application on forms that are prescribed by the registrar of contractors and that contain the following information and shall advise the registrar of any change in the information within thirty days:

(a) A designation of the classification of license that is sought by the applicant.

(b) If the applicant is an individual, the applicant's name and address.

(c) If the applicant is a partnership, the names and addresses of all partners with a designation of any limited partners.

(d) If the applicant is a corporation, an association or any other organization, the names and addresses of the president, vice-president, if any, secretary and treasurer or the names and addresses of the functional equivalent of these officers, the directors and the owners of twenty-five percent or more of the stock or beneficial interest.

(e) The name and address of the qualifying party.

(f) If the applicant is a corporation, evidence that the corporation is in good standing with the corporation commission.

(g) The address or location of the applicant's place of business and the mailing address if it is different from the applicant's place of business.

(h) Proof that the applicant has complied with the statutes or rules governing workers' compensation insurance.

2. Submit the appropriate bond and fee required under this chapter.

C. To obtain a contractor's license under this chapter other than a residential contractor's license, the applicant shall submit a detailed statement of current financial condition containing information required by the registrar of contractors on a form furnished by or acceptable to the registrar of contractors. Notwithstanding any other law, a swimming pool contractor shall also submit a detailed statement of current financial condition as required by this subsection.

D. To obtain or renew a license under this chapter, each person shall be of good character and reputation. Lack of good character and reputation may be established by showing that a person has engaged in contracting without a license or committed any act that, if committed or done by any licensed contractor, would be grounds for suspension or revocation of a contractor's license or by showing that the person was named on a contractor's license that was suspended or revoked in another state.

E. To obtain a license under this chapter, a person shall not have had a license refused or revoked, within one year before the person's application, or shall not have engaged in the contracting business, nor shall the person have submitted a bid without first having been licensed within one year before the person's application, nor shall a person act as a contractor between the filing of the application and actual issuance of the license. The registrar may find any of those actions or circumstances to be excusable if there was reasonable doubt as to the need for licensure or the actions of the applicant did not result in an unremedied hardship or danger or loss to the public. A person who has been convicted of contracting without a license is not eligible to obtain a license under this chapter for one year after the date of the last conviction.

F. Before a license is issued, the qualifying party shall:

1. Have had a minimum of four years' practical or management trade experience, at least two of which must have been within the last ten years, dealing specifically with the type of construction, or its equivalent, for which the applicant is applying for a license. Technical training in an accredited college or university or in a manufacturer's accredited training program may be substituted for a portion of such experience, but in no case may credited technical training exceed two years of the required four years' experience. The registrar of contractors may reduce the four years' practical or management experience requirement if in the registrar's opinion it has been conclusively shown by custom and usage in the particular industry or craft involved that the four-year requirement is excessive. The registrar may waive the work experience documentation and verification or the examination requirement if the records reflect that the qualifying party is currently or has previously been a qualifying party for a licensee in this state in the same classification within the preceding five years.

2. Successfully show, by written examination taken not more than two years before application, if required, qualification in the kind of work for which the applicant proposes to contract, the applicant's general knowledge of the building, safety, health and lien laws of the state, administrative principles of the contracting business and the rules adopted by the registrar of contractors pursuant to this chapter, demonstrate knowledge and understanding of construction plans and specifications applicable to the particular industry or craft and of the standards of construction work and techniques and practices in the particular industry or craft and demonstrate a general understanding of other related construction trades, in addition to any other matters as may be deemed appropriate by the registrar to determine that the qualifying party meets the requirements of this chapter. The registrar shall maintain multiple versions of examinations for each type of license that requires an examination.

G. No license shall be issued to a minor, to any partnership in which one of the partners is a minor or to any corporation in which a corporate officer is a minor.

H. Before receiving, renewing and holding a license pursuant to this chapter, the registrar may require a license applicant or licensee to submit to the registrar a full set of fingerprints and the fees required in section 41-1750. The registrar shall submit the fingerprints and fees to the department of public safety for the purpose of obtaining a state and federal criminal records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.

32-1124. Issuance and display of license; suspension

A. On receipt by the registrar of the fee required by this chapter and an application furnishing complete information as required by the registrar, the registrar shall notify the applicant within sixty days from the date of the filing of a complete application of the action taken on the application, and if the registrar determines that the applicant is qualified to hold a license in accordance with this chapter, the registrar shall issue a license to the applicant permitting the applicant to engage in business as a contractor under the terms of this chapter.

B. Licenses issued under this chapter and any renewals shall be signed by the registrar or the registrar's designated representative and by the licensee. The license shall be nontransferable, and satisfactory evidence of possession shall be exhibited by the licensee on demand. The license number appearing on any licenses held by the licensee shall be preceded by the acronym "ROC" and shall be posted in a conspicuous place on premises where any work is being performed, shall be placed on all written bids submitted by the licensee and shall be placed on all broadcast, published, internet or billboard advertising, letterheads and other documents used by the licensee to correspond with the licensee's customers or potential customers in the conduct of business regulated by this chapter. A violation of this subsection relating to posting and placement of license numbers shall be, at the discretion of the registrar, grounds for disciplinary action pursuant to section 32-1154, subsection A, paragraph 12, but not grounds for preventing the award of a contract, voiding an awarded contract, or any other claim or defense against the licensee. For the purposes of this subsection, advertising does not include a trade association directory listing that is distributed solely to the members of the association and not to the general public.

C. If an application for a license is denied for any reason provided in this chapter, the application fee paid by the applicant shall be forfeited and deposited pursuant to section 32-1107. A reapplication for a license shall be accompanied by the fee fixed by this chapter.

D. On issuance or renewal of a license, the registrar, at the request of a licensee, shall issue a single license certificate showing all contracting licenses held by the licensee that are currently in good standing and their dates of expiration.

E. The registrar may establish procedures to allow a licensee to establish a common expiration or renewal date for all licenses issued to the licensee and may provide for proration of license fees for that purpose.

F. The registrar shall suspend by operation of law a license issued under this chapter if any of the following occurs:

1. The licensed entity is dissolved. The dissolution of the licensed entity includes the death of a sole owner, a change to the partnership by either adding or removing a partner, the revocation or dissolution of corporate authority or the dissolution of a limited liability company or limited liability partnership.

2. The licensed entity does not have authority to do business in this state.

3. The license is obtained or renewed with an insufficient funds check. The license remains suspended until the registrar receives a certified check, a money order or cash as payment for the license fees and assessments.

32-1125. Renewal of license; qualifying party

A. Except as provided in section 32-4301, a license issued under this chapter shall be suspended on the day following its renewal date by operation of law. An application for renewal of any current contracting license addressed to the registrar, with a valid bond or cash deposit on file with the registrar, accompanied by the required fee and received by the registrar or deposited in the United States mail postage prepaid on or before the renewal date shall authorize the licensee to operate as a contractor until actual issuance of the renewal license. The registrar may refuse to renew a license if a licensee or person has committed or been found guilty of any act listed in section 32-1154.

B. A license which has been suspended by operation of law for failure to renew may be reactivated and renewed within one year of its suspension by filing the required application and payment of the application fee in the amount provided for renewal in this chapter in addition to a fifty dollar fee. When a license has been suspended for one or more years for failure to renew, a new application for a license must be made and a new license issued in accordance with this chapter.

C. A licensee may make written application to the registrar for exemption from a qualifying party. The applicant shall show to the satisfaction of the registrar that during the past five years:

1. The license has been in effect.

2. A transfer of ownership of fifty per cent or more of the stock, if applicable, or beneficial interest, in the licensee has not occurred.

3. No more than five valid complaints which have not been resolved by the licensee, as determined by the registrar, have been filed against the licensee.

The application shall be approved or denied within thirty days after its receipt. If the application is not approved, the licensee may within thirty days request a hearing to be held pursuant to section 32-1156. If the application is approved, the exemption takes effect immediately.

D. A licensee which is exempt from the requirement for a qualifying party pursuant to subsection C of this section may be required by the registrar after a hearing to obtain a qualifying party within sixty days on a finding that:

1. A transfer of ownership of fifty per cent or more of the stock, if applicable, or beneficial interest, in the licensee has occurred.

2. A violation of section 32-1154 has occurred.

32-1126. Fees

A. The license fees prescribed by this chapter shall be as follows:

1. Application and license fees for an original biennial license:

(a) For general residential contracting and subclassifications of general residential contracting, not more than five hundred dollars.

(b) For general commercial contracting and subclassifications of general commercial contracting, not more than one thousand five hundred dollars.

(c) For general dual licensed contracting, not more than two thousand dollars.

(d) For specialty residential contracting, not more than three hundred fifty dollars.

(e) For specialty commercial contracting, not more than one thousand dollars.

(f) For specialty dual licensed contracting, not more than one thousand three hundred fifty dollars.

2. Biennial license renewal fee:

(a) For general residential contracting and subclassifications of general residential contracting, not more than three hundred twenty dollars.

(b) For general commercial contracting and subclassifications of general commercial contracting, not more than one thousand dollars.

(c) For general dual licensed contracting, not more than one thousand three hundred twenty dollars.

(d) For specialty residential contracting, not more than two hundred seventy dollars.

(e) For specialty commercial contracting, not more than nine hundred dollars.

(f) For specialty dual licensed contracting, not more than one thousand one hundred seventy dollars.

B. The fee for an annual license renewal granted pursuant to section 32-1123.01 shall be one-half of the biennial license renewal fee.

C. The registrar may establish reasonable fees for services performed by the registrar relating to reexaminations, processing of applications, changes of qualifying party and approval of name changes on licenses.

D. The penalty for failure to apply for renewal of a license within the time prescribed by this chapter shall be fifty dollars.

E. The registrar may establish a separate fee for examination.

F. The registrar may contract with private testing services to establish and administer such examinations and may authorize the payment of the examination fee to the private testing service.

32-1151.01. Change in ownership; notice to registrar

A corporation, association or other organization which is a licensed contractor shall immediately notify the registrar of any transfer of ownership of fifty per cent or more of the stock or beneficial interest in the company.

32-1152.01. Alternatives to cash deposit

A. As an alternative to the cash deposit provided for in section 32-1152, subsection B, a contractor may substitute any of the following:

1. Certificates of deposit assigned to the registrar, issued by banks doing business in this state and insured by the federal deposit insurance corporation.

2. Investment certificates or share accounts assigned to the registrar and issued by a savings and loan association doing business in this state and insured by the federal deposit insurance corporation.

B. The terms and conditions surrounding each of such types of security shall be prescribed by the registrar.

32-1152. Bonds

A. Before granting an original contractor's license, the registrar shall require of the applicant a surety bond in a form acceptable to the registrar or a cash deposit as provided in this section. No contractor's license may be renewed unless the applicant's surety bond or cash deposit is in full force and effect.

B. The bonds, or the cash deposit as provided in this section, shall be in the name of the licensee in amounts fixed by the registrar with the following schedules after giving due consideration to the volume of work and the classification contemplated by the applicant:

1. General commercial building contractors and subclassifications of general commercial contractors shall furnish a surety bond or cash deposit in an amount that is determined as follows:

(a) If the estimated annual volume of construction work of the applicant is ten million dollars or more, the applicant shall furnish a surety bond or cash deposit of not less than fifty thousand dollars or more than one hundred thousand dollars.

(b) If the estimated annual volume of construction work of the applicant is more than five million dollars and less than ten million dollars, the applicant shall furnish a surety bond or cash deposit of not less than thirty-five thousand dollars or more than seventy-five thousand dollars.

(c) If the estimated annual volume of construction work of the applicant is more than one million dollars and less than five million dollars, the applicant shall furnish a surety bond or cash deposit of not less than fifteen thousand dollars or more than fifty thousand dollars.

(d) If the estimated annual volume of construction work of the applicant is more than five hundred thousand dollars and less than one million dollars, the applicant shall furnish a surety bond or cash deposit of not less than ten thousand dollars or more than twenty-five thousand dollars.

(e) If the estimated annual volume of construction work of the applicant is more than one hundred fifty thousand dollars and less than five hundred thousand dollars, the applicant shall furnish a surety bond or cash deposit of not less than five thousand dollars or more than fifteen thousand dollars.

(f) If the estimated annual volume of construction work of the applicant is less than one hundred fifty thousand dollars, the applicant shall furnish a surety bond or cash deposit of five thousand dollars.

2. Specialty commercial contractors shall furnish a surety bond or cash deposit in an amount that is determined as follows:

(a) If the estimated annual volume of construction work of the applicant is ten million dollars or more, the applicant shall furnish a surety bond or cash deposit of not less than thirty-seven thousand five hundred dollars or more than fifty thousand dollars.

(b) If the estimated annual volume of construction work of the applicant is more than five million dollars and less than ten million dollars, the applicant shall furnish a surety bond or cash deposit of not less than seventeen thousand five hundred dollars or more than thirty-seven thousand five hundred dollars.

(c) If the estimated annual volume of construction work of the applicant is more than one million dollars and less than five million dollars, the applicant shall furnish a surety bond or cash deposit of not less than seven thousand five hundred dollars or more than twenty-five thousand dollars.

(d) If the estimated annual volume of construction work of the applicant is more than five hundred thousand dollars and less than one million dollars, the applicant shall furnish a surety bond or cash deposit of not less than five thousand dollars or more than seventeen thousand five hundred dollars.

(e) If the estimated annual volume of construction work of the applicant is more than one hundred fifty thousand dollars and less than five hundred thousand dollars, the applicant shall furnish a surety bond or cash deposit of not less than two thousand five hundred dollars or more than seven thousand five hundred dollars.

(f) If the estimated annual volume of construction work of the applicant is less than one hundred fifty thousand dollars, the applicant shall furnish a surety bond or cash deposit of two thousand five hundred dollars.

3. The total amount of the surety bond or cash deposit required of a licensee who holds more than one license under paragraphs 1 and 2 of this subsection shall be the sum of the surety bond or cash deposit required for each license based on the estimated annual volume of construction work of the applicant allocated to and performed under each license. The applicant at his option may post a single surety bond or cash deposit that is the sum of the bonds or deposits determined under this subsection for all such licenses.

4. General dual licensed contractors and subclassifications of general dual licensed contractors shall furnish a single surety bond or cash deposit with amounts for each classification of license that are determined based on the volume of commercial work as determined under paragraph 1 of this subsection and the volume of residential work as determined under paragraph 5 of this subsection. Liability under the bond or cash

deposit shall be limited to the amount established for each commercial or residential license and is subject to the limitations and requirements set forth in subsection E of this section.

5. General residential contractors and subclassifications of general residential contractors shall furnish a surety bond or cash deposit in an amount of not more than fifteen thousand dollars and not less than five thousand dollars.

6. Specialty dual licensed contractors shall furnish a single surety bond or cash deposit with amounts for each classification of license that are determined based on the volume of commercial work as determined under paragraph 2 of this subsection and the volume of residential work as determined under paragraph 7 of this subsection. Liability under the bond or cash deposit shall be limited to the amount established for each commercial or residential license and is subject to the limitations and requirements set forth in subsection E of this section.

7. Specialty residential contractors shall furnish a surety bond or cash deposit in an amount of not more than seven thousand five hundred dollars and not less than one thousand dollars.

8. Dual licensed swimming pool contractors and residential swimming pool general contractors shall furnish a surety bond or cash deposit in the same amounts based on the volume of work as determined under paragraph 1 of this subsection for a general commercial contractor.

C. Dual licensed contractors and residential contractors shall also either:

1. Furnish an additional surety bond or cash deposit in the amount of two hundred thousand dollars solely for actual damages suffered by persons injured as described in section 32-1131. This bond shall be subject to the limitations on the amounts that may be awarded to individual claimants as established in section 32-1132.

2. Participate in the residential contractors' recovery fund and pay the assessment prescribed by section 32-1132.

D. The surety bonds shall be executed by the contractor as principal with a corporation duly authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the registrar in a form acceptable to the registrar. The contractor in the alternative may establish a cash deposit in the amount of the bond with the state treasurer in accordance with rules adopted by the registrar. Such cash bond monies shall be deposited, pursuant to sections 35-146 and 35-147, in the contractors' cash bond fund. The state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the state

general fund. Such cash deposits may be withdrawn, if there are no outstanding claims against them, two years after the termination of the license in connection with which the cash is deposited. The cash deposit may be withdrawn two years after the filing of a commercial surety bond as a replacement to the cash deposit.

E. The bonds or deposit required by subsection B of this section shall be for the benefit of and shall be subject to claims by the registrar of contractors for failure to pay any sum required pursuant to this chapter. The bond or deposit required by subsection B, paragraphs 1, 2 and 3 of this section is for the benefit of and subject to claims by a licensee under this chapter or a lessee, owner or co-owner of nonresidential real property including, but not limited to, a tenant in common or joint tenant, or their successors in interest, who has a direct contract with the licensee against whose bond or deposit the claim is made and who is damaged by the failure of the licensee to build or improve a structure or appurtenance on that real property at the time the work was performed in a manner not in compliance with the requirements of any building or construction code applicable to the construction work under the laws of this state or any political subdivision, or if no such code was applicable, in accordance with the standards of construction work approved by the registrar. The residential bond or deposit required by subsection B, paragraphs 4 through 8 of this section is for the benefit of and subject to claims by any person furnishing labor, materials or construction equipment on a rental basis used in the direct performance of a construction contract involving a residential structure or by persons injured as defined in section 32-1131. The bond or deposit required by subsection C, paragraph 1 of this section is for the benefit of and is subject to claims only by persons injured as described in section 32-1131. The person seeking recovery from the bond or cash deposit shall maintain an action at law against the contractor if claiming against the cash deposit or against the contractor and surety if claiming against the surety bond. If the person seeking recovery is required to give the notice pursuant to section 33-992.01, he is entitled to seek recovery only if he has given such notice and has made proof of service. The surety bond or cash deposit shall be subject to claims until the full amount thereof is exhausted. The court may award reasonable attorney fees in a judgment against a contractor's surety bond or cash deposit. No suit may be commenced on the bond or for satisfaction from the cash deposit after the expiration of two years following the commission of the act or delivery of goods or rendering of services on which the suit is based, except that time for purposes of claims for fraud shall be measured as provided in section 12-543. The surety bond or cash deposit shall be continuous in form and shall be conditioned so that the total aggregate liability of the surety or cash deposit for all claims, including reasonable attorney fees, shall be limited to the face amount of the surety bond or cash deposit irrespective of the number of years the bond or cash deposit is in force. If the corporate surety desires to make payment without awaiting court or registrar action, the amount of any bond filed in compliance with this chapter shall be reduced to the extent of any payment or payments

made by the corporate surety in good faith thereunder. Any such payments shall be based on priority of written claims received by the corporate surety before court or registrar action. If more than one cash deposit exists, the judgment against the contractor shall state which cash deposit shall be used to satisfy the judgment. A certified copy of the judgment shall then be filed with the registrar, and such judgment shall specify that it may be satisfied from the contractor's cash deposit. Priority for payment shall be based on the time of filing with the registrar. On receipt of a certified copy of the judgment or on a final disciplinary order of the registrar, the registrar may authorize payment from the cash deposit of the amount claimed or of whatever lesser amount remains on file. In any action against a cash deposit, the claimant, at the time of filing suit, may notify the registrar in writing of the action against the cash deposit, but shall not name as a defendant in the action the registrar, the treasurer or the state. Failure to so notify the registrar at the time of filing suit may result in the cash deposit being withdrawn by the licensee before judgment pursuant to subsection D of this section.

F. When a corporate surety cancels a bond, the surety, not less than thirty days before the effective date of the cancellation, shall give the principal and the registrar a written notice of the cancellation. Notice to the principal shall be by certified mail in a sealed envelope with postage fully prepaid. Proof of notice to the principal shall be made available to the registrar on request. On reduction or depletion of the cash deposit, the registrar shall immediately notify the licensee of said reduction or depletion and that the licensee must replenish the cash deposit or furnish a surety bond on or before thirty days from the date of said reduction or depletion or the contractor's license shall be suspended on the thirtieth day without further notice or hearing. Notice to the contractor shall be by certified mail in a sealed envelope with postage fully prepaid thereon, addressed to the contractor's latest address of record in the registrar's office. The contractor's license shall be suspended by operation of law on the date the bond is canceled or thirty days from the date of reduction or depletion of the cash deposit unless a replacement bond or cash deposit is on file with the registrar.

G. The registrar and the state treasurer shall have no personal liability for the performance of duties relating to the bonds, cash deposits, certificates of deposit, investment certificates or share accounts required or permitted by this chapter as long as such duties are performed in good faith.

H. In the following instances the registrar, after a hearing, may require, as a condition precedent to issuance, renewal, continuation or removal of suspension of a license, a surety bond or cash deposit in an amount and duration to be fixed by the registrar based on the seriousness of the violations, which shall be not more than ten times the amount required by subsection B of this section:

1. When a license of either the applicant or the qualifying party has been suspended or revoked or a surety bond or cash deposit requirement has been increased under section 32-1154 previously as the result of disciplinary action for a violation of this chapter.

2. When either the applicant or qualifying party was an officer, member, partner or qualifying party for a licensee at any time during which cause for disciplinary action occurred resulting in suspension or revocation of such licensee's license and such applicant or qualifying party had knowledge of or participated in the act or omission that was the cause of such disciplinary action for a violation of this chapter.

3. The bonds required by this subsection shall be in addition to any other bond or cash deposit required by this chapter or any other bond required of a contractor by an owner or any other contracting party on any contract undertaken by him pursuant to the authority of such license.

32-1156. Hearings

A. Title 41, chapter 6, article 10 applies to hearings under this chapter.

B. In a hearing or rehearing conducted pursuant to this section a corporation may be represented by a corporate officer or employee who is not a member of the state bar if:

1. The corporation has specifically authorized the officer or employee to represent it.

2. The representation is not the officer's or employee's primary duty to the corporation but is secondary or incidental to the officer's or employee's duties relating to the management or operation of the corporation.

32-1166. Injunctive relief; civil penalty

A. In addition to all other remedies, when it appears to the registrar, either upon complaint or otherwise, that any person, firm, partnership, corporation, association or other organization, or a combination of any of them, has engaged in or is engaging in any act of contracting, practice or transaction which constitutes a violation of this chapter, or any rule or order of the registrar, the registrar may serve upon such person, firm, partnership, corporation, association or other organization not currently licensed under this chapter, by certified mail or by personal service, a cease and desist order requiring the person, firm, partnership, corporation, association or other organization to cease and desist immediately, upon receipt of the notice, from engaging in such act, practice or transaction. In conjunction with the cease and desist order, the registrar may issue a citation for a violation. Each citation shall be in writing and shall clearly describe the violation for which the citation was issued. Each citation shall contain an order to cease and desist and an assessment of a civil penalty in an amount of at least two hundred dollars for each violation but not more than two thousand five hundred dollars for the multiple violations committed on the same day. If after the issuance of a citation by the registrar, the person or organization receiving the citation fails to cease and desist in the violation or violations described in the citation, the registrar may assess an additional civil penalty of up to two thousand five hundred dollars for each day the violation or violations continue. The registrar shall adopt rules covering the assessment of a civil penalty that give due consideration to the gravity of the violation and any history of previous violations. The penalties authorized under this section are separate from, and in addition to, all other remedies either civil or criminal.

B. Each violation of this chapter or a rule or order of the registrar by a person who is required to be licensed by this chapter and who does not possess the required license shall constitute a separate offense, and the registrar may impose a civil penalty of not to exceed two thousand five hundred dollars for each violation except that for multiple violations committed on the same day the civil penalty shall not exceed two thousand five hundred dollars for all such violations. Monies collected from civil penalties shall be deposited in the state general fund.

C. The registrar of contractors may issue citations containing orders to cease and desist and of civil penalties against persons who have never been licensed under this chapter who are acting in the capacity of or engaging in the business of a contractor in this state.

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.

2. The resources of the agency granting or denying the license.

3. The economic impact of delay on the regulated community.

4. The impact of the licensing decision on public health and safety.

5. The possible use of volunteers with expertise in the subject matter area.

6. The possible increased use of general licenses for similar types of licensed businesses or facilities.

7. The possible increased cooperation between the agency and the regulated community.

8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.

2. Within seven days after receipt of initial application.

3. By a lottery method.

32-1170.02. Qualification examination

A. To qualify as a solar contractor under this article, the applicant shall:

1. Submit to the registrar an application on forms prescribed by the registrar, identifying the applicant and the classification of license held or sought by the applicant, and pay the prescribed fee.

2. Pass an examination approved and conducted by the registrar that is specific to the solar requirements of the classification of license held or sought by the applicant.

3. Meet all other provisions of this chapter relating to obtaining and retaining an appropriate license.

B. The examination shall be given by the registrar at the times and places prescribed by the registrar.

C. The license of a successful applicant shall be appropriately marked or supplemented by the registrar to indicate qualification as a solar contractor within the scope of that license.

E-2

AGRICULTURAL EMPLOYMENT RELATIONS BOARD (F-17-0206)
Title 4, Chapter 2, Article 1, General Provisions; Article 2, Elections; Article 3, Unfair Labor Practices; Article 4, Hearings

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-2**

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

FROM: Daniel Schwiebert, Legal Intern

DATE : April 18, 2017

SUBJECT: **AGRICULTURAL EMPLOYMENT RELATIONS BOARD (F-17-0206)**
Title 4, Chapter 2, Article 1, General Provisions; Article 2, Elections; Article 3, Unfair Labor Practices; Article 4, Hearings

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Summary of the Rules

This five-year-review report from the Agricultural Employment Relations Board (Board) covers thirty rules in A.A.C. Title 18, Chapter 2, related to preventing unfair labor practices and facilitating orderly elections.

Article 1 contains five rules and provides general provisions related to the Chapter. It includes definitions, procedural policies, and conditions on picketing. Article 2 contains eighteen rules and provides procedures for electing union representation. Article 3, contains five rules and provides procedures for alleging unfair labor practices. Article 4, contains two rules and provides general provisions regarding hearings and hearing review. All rules were adopted in 1995 (Supp. 95-4) and last-amended in 2003, (NFR at 9 A.A.R. 460, eff. Jan. 21, 2003 (Supp. 03-1)).

The legislature established the Board to "provide a means to bargain collectively that is fair and equitable to agricultural employers, labor organizations and employees" and "resolve questions concerning representation of agricultural employees." Laws 1993, Ch. 139 § 1. The legislature continued the Board to "foster labor peace, to provide a forum for this state's agricultural industry and employees to resolve labor disputes and to develop more constructive labor relations." Laws 2013, Ch. 196, § 2.

Proposed Action

The Board does not plan to initiate rulemaking at this time, but intends to conduct further research on a potential First Amendment issue with the current wording of R4-2-102(A), which says, "A person shall not use a picket sign unless …." The Board indicates that if its research leads the Board to conclude that a rulemaking is necessary, the Board will initiate such

rulemaking, and review and incorporate additional recommendations Staff identified during the review process. Staff's additional recommendations include minor technical changes and clarifications in the current wording of the rules and minor additions to the rules to make certain implied procedural steps more explicit.

Substantive or Procedural Concerns

None.

ANALYSIS OF THE AGENCY'S REPORT PURSUANT TO THE CRITERIA IN A.R.S. § 41-1056 AND R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

   Yes. The Board certifies it is in compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

   Yes. The Board indicates the rules are effective in meeting their respective objectives.

   When Staff reviews R4-2-102 from the perspective that there is no First Amendment issue, the rule appears to be more effective if the condition on picket signs were expanded to include all protest material. Under the current wording, an employee can circumvent the rule by simply using a banner, flag, or other medium (besides a "sign") with which to picket, and thus defeat the effectiveness of the rule.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

   No. The Board indicates it has received no written criticisms of the rules.

   The Board does cite to two public commenters, the Arizona Farm Bureau and the Yuma Fresh Vegetable Association, who expressed concern with some of Staff's recommendations. Staff is confident the Board will engage all stakeholders before making any final determination with respect to rulemaking.

4. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes. The Board cites to both general and specific authority for the rules. In pertinent, A.R.S. § 23-1387(B) provides that the Board shall adopt rules as may be necessary to carry out the Chapter.

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

   Yes. The Board indicates the rules are consistent with statutes and other rules.

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

Yes. The Board indicates the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Board believes the rules are clear, concise, and easy to understand. However, Staff has identified minor technical changes and clarifications, which the Board indicates could improve the rules as a whole.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

The Board indicates the rules are not more stringent than federal laws, but that the Board will conduct further research on R4-2-102.

The Board indicates the legislature modelled its Agricultural Labor Relations Act (ALRA) off the federal National Labor Relations Act (NLRA). However, Staff's research indicates that the federal NLRA does not place conditions on the peaceful use of picket signs, as both Arizona's ALRA and Arizona's NLRA do.[1] Thus, Staff believes that that portion of Arizona's ALRA, which the Board indicates gives specific authority for R4-2-102, could be considered more stringent than the NLRA.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

No. The rules were adopted in 1995, and last amended prior to 2010.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

The Board nonetheless indicates that the rules comply with A.R.S. § 41-1037.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

[1] The federal appellate court in United Food & Commercial Workers Local 99 v. Bennett, 934 F. Supp. 2d 1167 (D. Ariz. 2013) held (at page 1215) that Arizona's NLRA definition of "secondary boycott" (A.R.S. § 23-1321(4)) was more stringent than federal law because "[it] in fact reaches beyond violent activity and includes strikes and picketing, even where such activities are occurring peacefully." Arizona's ALRA definition of "secondary boycott" is not an original, ALRA definition, but rather a link to this definition (See A.R.S. § 23-1385(B)(6), which merely directs stakeholders to A.R.S. § 23-1321(4)).

Yes. The Board indicates that previous review did not identify any action to be taken.

CONCLUSION

The report does not meet the requirements of A.R.S. § 41-1056 and R1-6-301. The Board does not plan on making any amendments. This analyst recommends approval.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-2**

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

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **AGRICULTURAL EMPLOYMENT RELATIONS BOARD (F-17-0206)**
Title 4, Chapter 2, Article 1, General Provisions; Article 2, Elections; Article 3, Unfair Labor Practices; Article 4, Hearings

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Staff has reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and makes the following comments.

1. <u>Economic Impact Comparison</u>

The economic, small business, and consumer impact statement (EIS) from the most recent Board rulemaking completed in 2003 was reviewed for Articles 1, 2, 3, and 4.

The Articles in Chapter 2 address all the procedures utilized by the Agricultural Employment Relations Board (the "Board"). The Board provides a forum for agricultural workers to engage in collective-bargaining, elect representation, and address labor disputes.

Key stakeholders that are impacted are the Board, agricultural workers, agricultural labor unions, and agricultural employers. The Board notes that these stakeholders all benefit from uniform administrative procedures.

The Board concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Articles cited above. The Board notes that the agricultural industry has recently grown to $17 billion, and in the 2003 EIS, the Board noted that the agricultural industry was valued at $6.3 billion.

2. <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Board concludes that the rules impose the least burden and costs to persons regulated by the rules in order to achieve the regulatory objective.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Board by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Agricultural Employment Relations Board

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

December 7, 2016

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Five-Year Review Report for A.A.C. Title 4, Chapter 2, Articles 1-4

Dear Ms. Ong:

Enclosed please find the Agricultural Employment Relations Board's five-year review report for A.A.C. Title 4, Chapter 2, Articles 1-4. All rules in these Articles have been reviewed, and there is no intention for a rule to expire under A.R.S. § 41-1056(J).

The Board certifies, in accordance with A.R.S. § 41-1056(A), that it is in compliance with A.R.S. § 41-1091.

Please contact Christopher McCormack at (602) 542-8334 or Christopher.McCormack@AZAG.gov with any questions about this report.

Sincerely,

Steven Barclay,
Chairman

SB/cm

ARIZONA AGRICULTURAL EMPLOYMENT RELATIONS BOARD

2016 FIVE-YEAR REVIEW REPORT

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTUREAL EMPLOYMENT RELATIONS BOARD

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II.	Information That Is Identical For All Rules	3
III.	Information That Is Different For Each Rule	5
IV.	Previous Economic Impact Statement	11

Arizona Agricultural Employment Relations Board
2016 Five-Year Review Report
I. Introduction

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Arizona Agricultural Employment Relations Board rules listed under A.A.C. Title 4, Chapter 2 is due December 30, 2016.

The Agricultural Employment Relations Board was re-established to provide a means to collective-bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.

II. Information That Is Identical For All Rules

3. Effectiveness.

The rules are effective in meeting their respective objectives.

5. Enforcement.

The rules are enforced as written.

6. Clarity, Conciseness and Understandability.

The Board believes the rules are clear, concise, and easy to understand.

7. Written Criticisms & Public Comment.

The Board has not received any written criticisms of the current rules that are in place. The board has received verbal comment expressing the importance of these rules. Jim Klinker of the Arizona Farm Bureau, was present at the Boards February 8, 2017 and March 28, 2017 meeting; during public comment, Mr. Klinker explained the history of Agricultural Labor Relation Act and emphasized the importance of these rules. He expressed concern with some of the recommendations made by the GRRC Staff Attorney. Additionally, Shelly Tunis, representing Yuma Fresh Vegetable Association, was present at both meetings and stressed the importance of considering the intent of the Agricultural Labor Relations Act and why it is different from the National Labor Relations Act. She also expressed concern about the recommendations made by the Staff Attorney.

8. Economic, Small Business, and Consumer Impact Comparison.

The economic impact of the rules has not differed significantly from that projected in the economic impact statement prepared in 2003, when these rules were last amended. However, it is worth noting that recent reports show that Arizona's Agricultural industry has grown to over $17 billion rather than the $6.3 billion indicated in the 2003 Economic Impact Statement. While the industry has been fortunate not to have a labor dispute over the past 5 years, the increased value of the industry adds to the importance of having the Agricultural Employment Relations Board in place in the event a labor dispute arises.

9. Analysis Submitted Comparing Rule's Impact.

No analysis was submitted.

10. Completion of Previous Five-Year Review.

A previous 5 year review was completed in 2012. The previous review did not identify any action to be taken.

11. Least Burden and Costs to Persons Regulated Necessary to Achieve the Underlying Regulatory Objective.

The Board believes these rules impose the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective.

12. Determination that Rules are not more Stringent than Corresponding Federal Law

The Board's statutes and rules are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction, See 29 U.S.C.A. § 152(3). The Arizona Legislature authorized the Agricultural Employment Relations Board to cover "persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board." Ariz. Rev. Stat. Ann. § 23-1394. Aside from covering an industry that is specifically excluded by the corresponding Federal Law, these rules are not more stringent than those Federal Laws.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit

These rules comply with A.R.S. § 41-1037.

14. Proposed Action.

The GRRC Staff Attorney identified some areas which could improve the rule as a whole. Most of these recommendations are minor technical changes that the Board does not believe warrant a formal rulemaking. However, the Board recognizes that R4-2-102(A) implements requirements for using picket signs with the intent of preventing the unfair labor practice of secondary boycotting. These requirements could be viewed as a violation of free speech. The Board intends to continue to research this legal issue to see how best to address this rule. If a rulemaking is necessary, the board intends to review and incorporate the additional changes recommended by the GRRC Staff Attorney.

Information that is different for each Article

Article 1

1. Statutory authority

All of the rules are authorized by A.R.S. § 23-1387(B).

In addition, R4-2-102 is authorized by A.R.S. § 23-1385(B)(6), R4-2-103 is authorized by A.R.S. §§ 23-1389 & 23-1390, R4-2-104 is authorized by A.R.S. § 23-1390(C), and R4-2-105 is authorized by A.R.S. §§ 23-1389 & 23-1390.

2. Objective

R4-2-101. Terms, Definitions

This rule sets forth the definition of particular terms used within Chapter 2.

R4-2-102. Strikes

This rule distinguishes agricultural employers from neutral third parties during a strike, and prohibits secondary boycotts and strikes.

R4-2-103. Notice of Appearance, Signing of Pleadings and Documents; Filing of Documents

This rule establishes the procedure for a person to be recognized as representing a party and the process by which documents are deemed filed.

R4-2-104. Service of Process and Legal Documents

This rule establishes the procedure for service of process and legal documents.

R4-2-105. Computation of Time

This rule prescribes the method to compute periods of time prescribed by this Chapter.

4. Consistency

Rules R4-2-101 through R4-2-105 are consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 23-1381 et seq.
Arizona Rules of Civil Procedure, Rules 5(c)(1), 5.1(a)(1), 6(a) & 11(a)

Information that is different for each Article

Article 2

1. Statutory authority

General: A.R.S. § 23-1387(B).

Specific: A.R.S. § 23-1389.

2. Objective

R4-2-201. Contents of Petition for Election

This rule prescribes the contents of a petition for an election to certify or decertify a labor union.

R4-2-202. Withdrawal of Petition

This rule establishes the procedure to use to withdraw a petition.

R4-2-203. Challenge to Petition; Waiver

This rule prescribes the response of the Board if a challenge is filed. The rule also requires a respondent to file a timely challenge to the petition, or it is deemed waived.

R4-2-204. Investigation of Petition

This rule prescribes the procedure by which the Board investigates a petition to determine if a question of representation exists as well as the confidentiality requirements that apply.

R4-2-205. Time for Submission of Authorizations

This rule prescribes the time for filing authorizations and the timing of when additional authorizations must be signed.

R4-2-206. Form and Content of Authorizations

This rule establishes the form and content of authorizations.

R4-2-207. Validity of Authorizations

This rule establishes the requirements for an authorization to be deemed valid.

R4-2-208. Confidentiality of Authorizations

This rule establishes the confidentiality of authorizations.

R4-2-209. Showing of Interest Computation

This rule regulates which employees are counted when computing a showing of interest for an election to be held.

R4-2-210. Existence of a Question of Representation

This rule establishes the minimum percentage of workers necessary to determine that a question of representation exists.

R4-2-211. Notice of Hearing

This rule requires the Board to issue a Notice of Hearing whenever there is a question of representation following a petition for election. The rule also allows any person to request the Board to be personally notified whenever a Notice of Hearing is issued.

R4-2-212. Intervention by a Subsequent Labor Organization

This rule establishes the procedures for a second labor organization to try to get on an election ballot.

R4-2-213. Peak Employment During Eligibility Period and Election

This rule establishes the criteria for a Hearing Officer to determine if a bargaining unit is at peak and when an election can be held.

R4-2-214. Election Procedures

This rule prescribes voting rights, the use of observers, challenges to ballots, and vote counting.

R4-2-215. Objections to Election

This rule establishes the process by which challenges to the election are brought to the Board and the subsequent duties of the Board.

R4-2-216. Investigation of Objections to Election

This rule details the actions the Board may take as a result of investigating objections to the election, including setting the matter for a hearing.

R4-2-217. Run-off Elections

This rule prescribes the process under which a run-off election is held, and the remedies available upon conclusion of the run-off election.

R4-2-218. Consent-election Agreements

This rule permits an agricultural employer and a union to enter into an agreement setting forth how the election will be held and who will vote.

4. Consistency

Rules R4-2-201 through R4-2-218 are consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. § 23-1389

Information that is different for each Article

Article 3

1. Statutory authority

General: A.R.S. § 23-1387(B).

Specific: A.R.S. §§ 23-1386(D), 23-1390 & 23-1391.

2. Objective

R4-2-301. Unfair Labor Practice Charges

This rule prescribes who may make an unfair labor practice charge and ability to withdraw the charge.

R4-2-302. Form and Contents of Charge

This rule establishes the form and content of an unfair labor practice charge.

R4-2-303. Investigation of Charge

This rule instructs the Board to serve a charge on the charged party, instructs the General Counsel to perform a preliminary investigation, lists the General Counsel's options for proceeding following the preliminary investigation, and makes investigative documents confidential.

R4-2-304. Complaint

This rule prescribes the procedures followed by the General Counsel to issue, or withdraw, a formal complaint.

R4-2-305. Refusal to Issue Complaint

This rule establishes the right of the General Counsel to refuse to issue or withdraw a complaint, the charging party's right to request reconsideration of the decision, and the General Counsel's right to issue or reissue a complaint after refusing to issue or withdrawing it.

4. Consistency

Rules R4-2-301 through R4-2-305 are consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 23-1390 & 23-1391

Information that is different for each Article

Article 4

1. Statutory authority

General: A.R.S. § 23-1387(B).

Specific: A.R.S. §§ 23-1387(B), 23-1389(C), 23-1390(B) & 41-1092.02(A).

2. Objective

R4-2-401. Hearings

This rule indicates that the Board will use A.R.S. § 41-1092 et seq. to conduct administrative hearings.

R4-2-407. Rehearing

This rule sets out the bases for the Board to grant a rehearing and the procedure for granting a rehearing.

4. Consistency

Rules R4-2-401 and R4-2-407 are consistent with statute and other rules.

List of statutes or rules used in determining consistency:
A.R.S. §§ 41-1092.02(A) & 41-1092.09
Arizona Rule of Civil Procedure, Rule 59(a)

2003 RULEMAKING

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

TITLE 4. PROFESSIONS AND OCCUPATIONS

Chapter 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

R4-2-101 through R4-2-407

Overview:

The Agricultural Employment Relations Board was re-established by the Arizona State Legislature in 1993 as a result of Laws 1993, Chapter 139 to provide a means to collective-bargaining that is fair and equitable to agricultural employers, labor organizations, and employees. Further, the Board was established to provide orderly election procedures in order to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state.

The Board's statutes are modeled after the National Labor Relations Act, which specifically excludes agricultural workers from its jurisdiction.

The Legislature recognized a balance between agricultural labor and employers was essential and thus created a Board with two labor representatives, two employer representatives, and three public representatives. The mandated balance of the Board precludes dominance by either labor or employers. The creation of the Board also declared that employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and the terms and conditions of employment.

The establishment of the Board recognized that, while the right to strike is a basic right of organized labor, "such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly." (A.R.S. § 23-1381)

By establishing the Board, the Legislature declared that the uninterrupted production, packing, processing, transporting, and marketing of agricultural products is vital to the public interest.

Arizona's agriculture industry was credited in 1993, the most recent year for which statistics are available, as being a $6.3 billion industry. The perishable and seasonal nature of much of Arizona's agriculture industry makes it incredibly vulnerable to irreparable harm should a strike take place without the oversight of the Board.

A. *The Agricultural Employment Relations Board*.

The Board will use the rules of the Office of Administrative Hearings (OAH) when holding a hearing at the Board, or may choose to assign a matter to the OAH. The Board will be responsible for the costs incurred for hearings held through the OAH. Based on experience this expense is expected to be negligible.

During the past five years, no hearings have been necessary, and one election was held.

The Board will incur modest expenses related to educating the regulated community on the amendments.

B. *Political Subdivision.*

The implementation of this rulemaking will directly affect the caseload of the Office of Administrative Hearings, but to a very minimal extent.

C. *Businesses Directly Affected By the Rulemaking.*

The regulated community the Board serves, and their attorneys, will be beneficially affected by the use of the uniform administrative procedures of the Office of Administrative Hearings.

D. *Private and Public Employment*

Private employment in the agriculture industry is protected by the implementation of these rules ensuring labor the right to organize and to be protected from the potential of unfair labor practices.

Public employment is not directly affected by the implementation and enforcement of this rulemaking.

E. *Consumers and the Public.*

Consumers and the public are indirectly affected by the implementation and enforcement of this rulemaking. It is in the best interest of the consumer for food production to be uninterrupted by a prolonged and costly labor dispute. Consumer pricing and the availability of food product is in part dependent upon peaceful labor and management relationships.

F. *State Revenue.*

This rulemaking will have no impact on state revenue.

Agricultural Employment Relations Board

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

April 4, 2017

Chris Kleminich & Daniel P. Schwiebert
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Response to Comments on the AERB Five-Year Review Report

Dear Mr. Kleminich and Mr. Schwiebert,

The Agricultural Employment Relations Board ("Board") would like to thank you for your comments and recommendations you made to the Board's Administrative Rules. This gave the Board an opportunity to conduct a careful review of all of these rules and as a result has a better understanding of the rules' intent and how they work together.

The Board believes that the majority of these recommendations are minor technical changes that do not warrant a full rulemaking. However, the Board acknowledges that one of the proposed recommendations may have a significant impact on the rules. The Board intends on conducting further legal research to make sure that if a change is necessary, it properly addresses all of the legal concerns. In the event the Board decides that an amendment is warranted, they plan on considering and incorporating additional recommendations.

Attached are brief responses to your comments. The Board would like Chris McCormack, the Board's legal counsel, to meet with you to address any questions or concerns you may have with these responses. You may reach him at Christopher.McCormack@AZAG.gov.

Thank you again for your assistance with this matter.

Sincerely,

Steven Barclay,
Chairman

SB/cm

Agricultural Employment Relations Board

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-3262 FAX (602) 542-5420

April 4, 2017

Board's Response to GRRC Staff Attorney's Comments on Administrative Rules:

DS1. The Board believes the existing definition of "Administrative Law Judge" is appropriate.

DS2. The Board believes the existing definition of "Interdependent Contractor" is sufficient and believes that the recommended improvement may cause confusion.

DS3. The Board recognizes that R4-2-102(A) may conflict with free speech, but plans on conducting additional legal research to determine how to address this conflict.

DS4. The Board's legal counsel has reviewed whether or not the ruling *in United Food & Commercial Workers Local 99 V. Bennett*, 934 F. Supp. 2d, 1167 (D. Ariz 2013) applies to the AERB statutes. Because this case ruled that the State's secondary boycott provision is preempted by the NLRA, and the NLRA specifically exempts Agriculture, the Board believes that the authorizing statutes were not affected by this ruling.

DS5. Because the Board does not have a formal efile system, there is a concern about allowing documents to be filed through other means. The time these documents are filed initiates additional deadlines; because of this, it is important to have a system in place that allows for the documents to be received, time stamped, and given a confirmation that the document was received. The Board may consider additional options to make this process less burdensome.

DS6. The Board believes that including language specifying the documents be signed is an appropriate amendment that will be considered if a formal rulemaking is necessary.

DS7. The Board believes that including language specifying the "notice of appearance" is an appropriate amendment that would make the rules more consistent. The Board will consider this amendment if a formal rulemaking is necessary.

DS8. The Board understands the concern with this rule, and will consider it in the event a formal rulemaking is necessary.

DS9. The Board agrees that this recommendation may be useful and is evaluating how address this issue if a formal rulemaking is necessary.

DS10. The Board agrees that this recommendation may be useful and is evaluating how they would like to make the change if a formal rulemaking is necessary.

DS11. The Board believes that the current language is sufficient because it requires that the individual be an Agricultural Employee when signed and during the eligibility period. There is a concern that the recommended language could erode the intent of this rule. However, the Board will consider amending this rule in the event a formal rulemaking is necessary.

DS12. The Board understands this recommendation, but believes that it has a greater potential of confusing the reader.

DS13. In the event that a labor dispute were to arise, the Board would be the ALJ.

DS14. Again, the Board would be acting in the capacity of the ALJ.

DS15. The Board likely could initiate a charge if it was appropriate.

DS16. The Board believes that removing the language "or designee" would make this rule consistent with the remaining rules without changing the meaning of the rule because the Attorney General is the general counsel, and there is a designation letter in place. This will be considered if a formal rulemaking is necessary.

DS17. A.R.S. 23-1391, provides the board with investigatory powers, one of which is subpoena powers. Based on the nature of the items identified as beyond the subpoena power and the fact that the rule scope is limited to "subpoena powers of the Act," the Board believes that this rule clarifies that the Board's General Counsel work product is confidential and prohibits the parties from attempting to request the board issue a subpoena for those records. This rule does not attempt to restrict the power of a Superior Court Subpoena.

DS18. The Board will consider this recommendation.

DS19. The Board is satisfied with the current language.

DS20. Because the Board is conducting the hearing, it is necessary to use these statutes to govern their hearings.

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 2. AGRICULTURAL EMPLOYMENT RELATIONS BOARD

Authority: A.R.S. § 23-1381 et seq.

4 A.A.C. 2, consisting of Sections R4-2-101 thru R4-2-105, R4-2-201 thru R4-2-219, R4-2-301 thru R4-2-311, and R4-2-401 thru R4-2-407, adopted effective December 26, 1995 (Supp. 95-4).

ARTICLE 1. GENERAL PROVISIONS

Section
R4-2-101. Definitions
R4-2-102. Strikes
R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents
R4-2-104. Service of Process and Legal Documents
R4-2-105. Computation of Time

ARTICLE 2. ELECTIONS

Section
R4-2-201. Contents of Petition for Election
R4-2-202. Withdrawal of Petition
R4-2-203. Challenge to Petition; Waiver
R4-2-204. Investigation of Petition
R4-2-205. Time for Submission of Authorizations
R4-2-206. Form and Content of Authorizations
R4-2-207. Validity of Authorizations
R4-2-208. Confidentiality of Authorizations
R4-2-209. Showing of Interest Computation
R4-2-210. Existence of a Question of Representation
R4-2-211. Notice of Hearing
R4-2-212. Intervention by a Subsequent Labor Organization
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ARTICLE 1. GENERAL PROVISIONS

R4-2-101. Definitions

In addition to the definitions provided in A.R.S. § 23-1382, the following terms apply to this Chapter:

"Act" means the Agricultural Employment Relations Act, A.R.S. Title 23, Chapter 8, Article 5, § 23-1381 et seq.

"Administrative Law Judge" or "ALJ" means an individual, or the Board, who sits as an administrative law judge, conducts an administrative hearing in a contested case or an appealable agency action, and makes decisions regarding the contested case or appealable agency decision.

"Authorization period" means the four pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

"Bargaining unit" means those employees who share a community of interest with regard to wages and terms and conditions of employment as described in A.R.S. § 23-1389(B).

"Board agent" means any individual acting on behalf of the Board, including the Executive Secretary, the General Counsel, and investigators.

"Calendar year" means the period beginning January 1 and ending December 31.

"Consent election" means an election held following the Board's approval of a voluntary and complete consent election agreement submitted to the Board.

"Eligibility period" means the three pay periods immediately preceding the filing of a petition for election under A.R.S. § 23-1389(C).

"Executive Secretary" means the Executive Secretary appointed by the Board under A.R.S. § 23-1388.

"General Counsel" means the attorney representing the Board.

"Independent contractor" means an employer engaged in the business of supplying labor to a farm or ranch.

"Investigator" means a person with whom the Board contracts to investigate issues relating to unfair labor practice charges and petitions for election.

"Leave of absence" means an employment status determined by the employer and the employee permitting the employee to cease work for that employer for a specified period of time.

"Pay period" means the seven-day period used by an agricultural employer for payroll purposes. If the agricultural employer does not use a seven-day pay period, pay period means a seven-day period, Sunday through Saturday.

"Signature" means the name or mark of an individual, written by that individual to authenticate a writing.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-102. Strikes

A. A dispute between an independent contractor and agricultural employees or their representative shall not be deemed to be a labor dispute involving the farm or ranch, or the owner, lessee, or operator of the farm or ranch. A person shall not use a picket sign unless the sign clearly states the person against whom the employees or their representative are conducting the strike.

B. Employees or their representative may advertise their dispute with the agricultural employer and picket the employer. Employees or their representative shall not picket so as to interfere with the work of a neutral employer or supplier who is not involved in the dispute.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-103. Notice of Appearance; Signing Pleadings and Documents; Filing Documents

A. The attorney of a party to a proceeding under investigation by the Board shall promptly file a Notice of Appearance with the Board. Once filed, the notice shall remain in effect for the duration of the proceeding, or until the Board is notified, in writing, that the attorney is not representing the party.

B. A document filed with the Board shall be signed by the party or the party's attorney. A signature constitutes a certification that the signer has read the document, has a good faith basis for submission of the document, and that it is not filed for the purpose of delay or harassment.

C. A person shall file a document with the Board at its principal office, between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with the exception of Arizona legal holidays or by mail. A document is considered filed on the date it is received by the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-104. Service of Process and Legal Documents

A. A person serving a petition for election, petition for decertification, or subpoena shall serve according to A.R.S. § 23-1391(C).

B. If an attorney enters an appearance in a proceeding, service of motions and papers upon the attorney according to A.R.S. § 23-1391(C) constitutes service upon the party.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-105. Computation of Time

In computing any period of time prescribed by this Chapter, by order of the Board, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is not included. If the prescribed period of time is less than 11 days, intermediate Saturdays, Sundays, and Arizona legal holidays are not included in the computation. The last day of the period is included, unless it is a Saturday, Sunday, or Arizona legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or Arizona legal holiday.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 2. ELECTIONS

R4-2-201. Contents of Petition for Election

A. A petition for certification election filed under A.R.S. § 23-1389(C) by an agricultural employee, a group of agricultural employees, an individual, or a labor organization acting on the employees' behalf shall be signed under oath and shall contain the following information:

1. The name of the agricultural employer;
2. The address of the agricultural employer;
3. A description of the bargaining unit that the petitioner claims to be appropriate;
4. The approximate number of employees in the alleged appropriate unit;
5. A brief statement that the employer declines to recognize the petitioner as a bargaining representative within the meaning of A.R.S. § 23-1382(10) or that the petitioner is currently recognized but desires certification under the Act;
6. The name, affiliation, if any, and address of petitioner;
7. The name and address of any other person who claims to represent an employee in the alleged appropriate bargaining unit;
8. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date the strike or picketing commenced;
9. A statement that the petition for election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
10. Any other relevant fact.

B. A petition for decertification election filed under A.R.S. § 23-1389(J) by an agricultural employee, a group of agricultural employees, a labor organization, or an individual acting on the employees' behalf shall be signed under oath and contain the following information:

1. The name and address of the petitioner;
2. A statement that:
   a. A representative other than petitioner has been certified, or is currently recognized by the employer;
   b. Petitioner desires to rescind the certification; and
   c. The unit claimed to be appropriate, a description of the unit, and the number of employees in the unit;
3. The name, affiliation, if any, and address of the person whose recognition or certification the petitioner seeks to rescind;
4. A statement whether the agricultural employer has a contract with any labor organization or other representative of its employees and, if so, the expiration date;
5. Whether a strike or picketing is in progress at the agricultural employer's establishment and, if so, the approximate number of employees participating and the date the strike or picketing commenced;
6. A statement that the petition for decertification election is supported by 30 percent or more of the agricultural employees in the bargaining unit; and
7. Any other relevant fact.

C. The Board shall not accept for filing a petition for election that does not contain all the information required by subsections (A) or (B).

D. The Executive Secretary shall, within 10 days after the filing of a petition for election with the Board, send a copy of the petition to the respondent named in the petition. If the Board certified a representative other than the petitioner, a copy of the petition shall also be sent to the certified representative.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-202. Withdrawal of Petition
The petitioner and respondent may stipulate to withdraw a petition for election that is filed with the Board.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-203. Challenge to Petition; Waiver
A. The Board is not required to investigate a challenge to a petition for election filed under A.R.S. § 23-1389(F).
B. If a respondent fails to file a timely challenge to the petition for election under A.R.S. § 23-1389(F), the right to challenge is waived.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-204. Investigation of Petition
A. The Board or its agent shall notify the agricultural employer by telephone within 10 days after a petition for election is filed. Within seven days of notification, the agricultural employer shall furnish each employment record, payroll signature list, and other pertinent data requested by the Board or its agent to investigate the petition. The agricultural employer shall certify in writing and under oath that the information provided to the Board is true, complete, and accurate.
B. The Board shall review each authorization submitted under R4-2-205, as soon as practicable, to determine whether there is reasonable cause to believe a question of representation exists under A.R.S. § 23-1389 and R4-2-210.
C. The Board may conduct any investigation it deems necessary, following a review of the authorizations and pertinent employment data, to determine whether a question of representation exists including, but not limited to, a field investigation.
D. The Board shall conduct an investigation in a manner that preserves the confidentiality of the identity of an agricultural employee who does or does not sign an authorization. The Board shall not disclose an investigative report or the identity of a person interviewed in conjunction with the investigation except as required by law.
E. The Board or its agent shall not disclose to any person or party the number of authorizations filed or any other information concerning the investigation, except as required by law.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-205. Time for Submission of Authorizations
A. A petitioner shall submit every authorization with the petition for a certification election or decertification election. Except as provided in subsection (B), the Board shall not accept an authorization after the petition for certification election or decertification election is filed.
B. If the Board or its agent initially determines that the showing of interest is insufficient to warrant a pre-election hearing, the Board shall notify the petitioner that additional authorizations may be filed with the Board within the next two business days. An additional authorization is not valid unless it is signed after the day the petition is filed and the individual signing the authorization is an agricultural employee at the time the authorization is signed and at any time during the eligibility period.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-206. Form and Content of Authorizations
A. An individual can show interest by completing an authorization card or signing a petition.
B. An individual authorization card submitted to the Board as evidence of a showing of interest is not valid unless the card contains only one name, one signature, and the following information, which is printed unless otherwise specified by the Board:
1. The employee's name, name of employer, and social security or employee identification number;
2. The signature of the employee and date in the employee's own handwriting; and
3. A statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in this state only, and to file a petition for election under A.R.S. § 23-1389.

C. A signature petition submitted as authorization to evidence a showing of interest is not valid unless it contains:
1. The signature of the employee, social security or employee identification number, and date in the employee's own handwriting; and
2. The name of the employer and a statement that the employee is authorizing the petitioner to represent that employee for the purpose of collective bargaining in the state of Arizona only, and to file a petition for election under A.R.S. § 23-1389.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-207. Validity of Authorizations
A. A valid authorization is one that is signed at any time during the authorization period by an individual who is an agricultural employee at the time of signing the authorization, or is signed as prescribed in R4-2-205(B).
B. An authorization is valid even if the agricultural employee who signed that authorization also signed an authorization for another labor organization.
C. An authorization signed by an agricultural employee hired after the date the petition is filed is not valid for the purpose of computing the showing of interest.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-208. Confidentiality of Authorizations
An authorization and its contents are confidential except if subject to a lawful subpoena.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-209. Showing of Interest Computation
A. The Board or its agent shall compute the showing of interest for any pay period within the eligibility period by taking the total number of agricultural employees employed in the bar-

gaining unit during that pay period and determining how many of those employees signed a valid authorization as prescribed in this Article.

B. To determine whether an individual is an agricultural employee, permanent, within the meaning of A.R.S. § 23-1382(1), six months means 132 work days.

C. The Board shall not include as an employee in the bargaining unit for a pay period an agricultural employee who is eligible for unemployment benefits for the entire pay period.

D. The Board shall not include in the bargaining unit for a pay period an agricultural employee who is on a leave of absence for the entire pay period unless the following conditions are met:
1. The employer produces a document, signed by the employee and notarized, stating that the employee was placed on leave of absence for a specified period of time;
2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed; and
3. Substantial evidence does not exist establishing that the employee is not on a bona fide leave of absence or will not return from the leave of absence as scheduled.

E. The Board shall not include in the bargaining unit an agricultural employee who is placed on workers' compensation leave, unless the following conditions are met:
1. The employer produces a document signed by a licensed physician stating the date the employee was placed on workers' compensation leave and the date of the employee's projected return,
2. The date of the employee's projected return does not exceed six months from the date the petition for election is filed, and
3. Substantial evidence does not exist establishing that the employee is not on a bona fide workers' compensation leave or will not return from the workers' compensation leave as scheduled.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-210. Existence of a Question of Representation

A question of representation exists in the bargaining unit if a showing of interest of at least 30 percent is made in the final pay period of the eligibility period and in either of the other two pay periods of the eligibility period.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-211. Notice of Hearing

A. The Board shall issue a Notice of Hearing as prescribed in Article 4 if a question of representation exists.

B. A person may, by written request to the Board, receive notice of the filing of a petition for election and a related notice of hearing.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-212. Intervention by a Subsequent Labor Organization

A. An ALJ may allow a subsequent labor organization to intervene only at the initial session of the pre-election hearing on a petition filed by the first labor organization and may place the subsequent labor organization on an election ballot only if the ALJ finds:
1. The subsequent labor organization filed with the Board a petition for certification election together with a sufficient number of signed authorizations to meet the 30 percent showing of interest required to establish a question of representation under R4-2-210, and
2. The subsequent labor organization filed its petition and authorizations not later than seven days before the scheduled start of the initial session of the pre-election hearing.

B. In determining the validity of an authorization filed by a subsequent labor organization, the Board shall use the same authorization period as that of the original petitioner.

C. In determining the showing of interest for a subsequent labor organization, the Board shall use the same eligibility period as that of the original petitioner.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-213. Peak Employment During Eligibility Period and Election

A. A bargaining unit is at peak when the number of employees in the unit is not less than 66 2/3 percent of the maximum number of employees who have been or will be employed in the bargaining unit during the current crop growing season.

B. In determining the total number of bargaining unit employees who have been or will be employed at any one time during the current growing season, the ALJ shall consider:
1. The employer's prior peak employment figures,
2. The types of crops grown,
3. The past and present acreage for the crop or crops in question,
4. The number of employees at other farms with the same or similar crops and similar acreage, and
5. Any other relevant fact.

C. A question of representation exists in a bargaining unit only if the bargaining unit is at peak during the eligibility period as required by R4-2-210. The respondent named in a petition has the burden to allege and prove that the bargaining unit is not at peak during a pay period in an eligibility period.

D. The Board shall hold an election when the bargaining unit is at peak. If peak does not occur at any time during the remainder of the current growing season, the Board shall hold the election at peak during the following growing season.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-214. Election Procedures

A. Only an individual who is an agricultural employee in the appropriate bargaining unit on the date of an election is eligible to vote in the election.

B. A party may be represented by two observers of the party's selection, subject to the following limitations:
1. A union shall not select as an observer an official of any labor organization, and
2. An agricultural employer shall not select as an observer a supervisor or company official.

C. A party or the Board's agent may challenge, for good cause, the eligibility of an individual to participate in an election. The Board shall impound the ballot of a challenged individual.

D. The Board shall issue a tally of the ballots upon the conclusion of the election.

E. If there are enough challenged ballots to affect the results of the election, the Board shall, as soon as practicable, investigate the challenges, issue a revised tally, and serve the revised tally upon all parties.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-215. Objections to Election

A. Within seven days after the tally of the ballots by the Board, a party may file with the Board an objection to the conduct of the election or conduct affecting the results of the election. The party filing the objection shall specifically set forth each fact and allegation in support of the objection. The party filing the objection shall simultaneously serve a copy of the objection on all other parties and file a statement of service with the Board. The party filing the objection shall not raise in the objection an issue that was or could have been raised in either a challenge to the petition or the pre-election hearing.

B. The Board shall not take further action if an objection to the conduct of the election or conduct affecting the results of the election is not filed timely, or does not comply with subsection (A). The Board shall send a written notice to all parties that it will take no further action.

C. The Board shall immediately issue a certification of the results of the election, including certification or decertification of the representative, as appropriate, if:
1. Objections are not filed within the time prescribed in subsection (A), or
2. The number of challenged ballots is insufficient to affect the election results, and
3. A run-off election is not required under R4-2-217.

D. A party may appeal the Board's decision as prescribed in Title 41, Chapter 6, Article 10.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-216. Investigation of Objections to Election

A. The Board shall investigate objections to the conduct of an election or conduct affecting the results of an election if the objections meet the requirements of R4-2-215(A). The Board shall dismiss the objections and certify the results of the election on the basis of an administrative investigation if the Board determines that the objections are invalid.

B. An aggrieved party may appeal the Board's dismissal of the objections as prescribed in Article 4, within 30 days after the party receives the notice of dismissal of the objection. The Board may extend the time for filing an appeal for good cause.

C. If the Board determines that substantial and material factual issues exist that can be resolved only after a hearing, the Board shall issue a Notice of Hearing.

D. Any hearing under this Section and any objection to the ALJ's decision shall be initiated and conducted as prescribed in Article 4.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-217. Run-off Elections

A. If an election ballot provides for a choice among at least two labor organizations and "no union," and none of the choices on the ballot receive a majority of valid votes cast, the Board shall, as soon as practicable, conduct a run-off election.

B. In a run-off election, only an individual who is an agricultural employee in the appropriate bargaining unit on the date of the run-off election is eligible to vote.

C. The ballot in a run-off election shall provide for a selection between the labor organization receiving the highest number of votes in the original election and "no union."

D. The Board shall administer a run-off election as prescribed in R4-2-214 through R4-2-216.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-218. Consent-election Agreements

An agricultural employer may enter into a consent-election agreement with one or more individuals or labor organizations that present to the employer a claim to be recognized as the representative of a designated bargaining unit. The parties shall submit to the Board an agreement containing a description of the appropriate bargaining unit, a proposed time and place for holding the election, and a statement specifying which agricultural employees within the appropriate bargaining unit are eligible to vote. The Board shall conduct a consent election if the Board finds the consent-election agreement fair and noncollusive. The Board shall conduct a consent election consistent with the methods followed by the Board in conducting elections.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-219. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 3. UNFAIR LABOR PRACTICES

R4-2-301. Unfair Labor Practice Charges

Any person may make a charge that a person has engaged in or is engaging in an unfair labor practice. The charge may be withdrawn by the charging party before the hearing and thereafter with the consent of the ALJ. If a complaint has issued under R4-2-304 and the charge is withdrawn, the Board may dismiss the complaint on the advice of the General Counsel.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-302. Form and Contents of Charge

A. A charging party shall include the following in the charge:
1. The full name, address, and telephone number of the individual, agricultural employer, or labor organization making the charge;
2. If the charge is filed by a labor organization, the full name and address of any national or international labor organization of which it is an affiliate or constituent unit;
3. The full name and address of the individual, agricultural employer, or labor organization against whom the charge is made; and

4. A clear and concise statement of the facts constituting the alleged unfair labor practice.

B. A charging party shall make the charge in writing, sign the charge, and declare under penalty of perjury that its contents are true and correct to the best of the charging party's knowledge, information, and belief.

C. The Board shall not accept a charge for filing unless it contains all the information required in subsections (A) and (B).

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-303. Investigation of Charge

A. The Board shall serve a copy of a filed charge upon the individual, agricultural employer, or labor organization against whom the charge is made.

B. The General Counsel or designee shall conduct a preliminary investigation of the charge under A.R.S. § 23-1390(K). After the preliminary investigation, and at the discretion of the General Counsel, the General Counsel may:

1. Refuse to issue a complaint; or
2. File a complaint against any individual, agricultural employer, or labor organization named in the charge that the General Counsel believes may have committed an unfair labor practice; and
3. Seek appropriate injunctive relief, as provided for in A.R.S. § 23-1390.

C. An investigative report, note, memorandum, oral or written statement, tape recording, and any other information or work product prepared or obtained by the General Counsel or designee during an investigation is not subject to subpoena powers of the Act and a person shall not disclose this information to any person without the consent of the General Counsel, unless otherwise provided by law.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-304. Complaint

A. If the General Counsel decides after investigating a charge that a formal proceeding should be instituted, the General Counsel shall issue and serve on each party a complaint stating the alleged unfair labor practice. The General Counsel shall include in the complaint a clear and concise statement of the facts upon which the assertion of the Board's jurisdiction is based and a clear and concise description of the act that is claimed to constitute an unfair labor practice. The General Counsel shall include a notice of hearing issued under Article 4 with the complaint.

B. After the hearing date is set, the General Counsel shall not amend the complaint unless the ALJ grants a motion to amend made by the General Counsel.

C. The General Counsel may withdraw a complaint before the hearing. After the opening of the hearing, the complaint may be withdrawn upon motion by the General Counsel with consent of the ALJ.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-305. Refusal to Issue Complaint

A. If, after a charge is filed, the General Counsel declines to issue a complaint or, having withdrawn a complaint, refuses to reissue it, the General Counsel shall advise each party in writing, accompanied by a statement of the grounds for the action. The charging party may file a request to reconsider the refusal to issue or reissue the complaint with the General Counsel within 10 days of receipt of notice of the refusal and shall simultaneously serve a copy on all other parties. The General Counsel shall file any response to the request within seven days of receiving it. The General Counsel shall advise all parties of the decision, in writing and within seven days of the date the decision is made.

B. The charging party may file a request to reconsider with the General Counsel if, after the General Counsel refuses to issue or reissue a complaint, newly discovered material evidence is found that could not with reasonable diligence have been discovered at the time the original charge was filed. The request shall be filed immediately upon the discovery of the evidence.

C. Nothing in this Section prohibits or limits the General Counsel from issuing or reissuing a complaint following a notice of refusal to issue a complaint or withdrawal of a complaint.

D. If a complaint is withdrawn or dismissed on the General Counsel's own motion, the General Counsel shall not reissue the complaint more than six months after the date of the withdrawal or dismissal of the original complaint.

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4).
Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-306. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-307. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-308. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-309. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-310. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-311. Repealed

Historical Note
Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

ARTICLE 4. HEARINGS

R4-2-401. Hearings

The Board shall use the uniform administrative hearing procedures of A.R.S. Title 41, Chapter 6, Article 10 to govern the initiation and conduct of formal adjudicative proceedings before the Board.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-402. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-403. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-404. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-405. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-406. Repealed

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Section repealed by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

R4-2-407. Rehearing or Review of Decision; Basis

A. A party may file a motion for rehearing or review under A.R.S. § 41-1092.09.

B. The Board shall grant a rehearing or review of a final administrative law decision for any of the following causes materially affecting the moving party's rights:

1. The decision is not justified by the evidence or is contrary to law;
2. There is newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original proceeding;
3. One or more of the following has deprived the party of a fair hearing:
   a. Irregularity or abuse of discretion in the conduct of the proceeding;
   b. Misconduct of the Board, the ALJ, or the prevailing party; or
   c. Accident or surprise that could not have been prevented by ordinary prudence; or
4. Excessive or insufficient sanction.

C. The Board may grant a rehearing or review to any or all of the parties. The rehearing or review may cover all or part of the issues for any of the reasons stated in subsection (B). An order granting a rehearing or review shall particularly state the grounds for granting the rehearing or review, and the rehearing or review shall cover only the grounds stated.

Historical Note

Adopted effective December 26, 1995 (Supp. 95-4). Amended by final rulemaking at 9 A.A.R. 460, effective January 21, 2003 (Supp. 03-1).

Arizona Revised Statutes

Title 23: Labor

Chapter 8: Labor Relations

Article 5: Agriculture Employment Relations

23-1381. Declaration of policy

It is hereby declared to be the policy of this state that the uninterrupted production, packing, processing, transporting and marketing of agricultural products are vital to the public interest. It is also declared to be the policy of this state that agricultural employees are free to organize, to take concerted action and, through representatives of their own choosing, to enter into collective bargaining contracts establishing their wages and terms and conditions of employment or to refrain from engaging in any or all of these activities. It is further declared that there now exists an inequality of bargaining power between agricultural employers and labor unions, arising out of the seasonal character and perishable nature of such agricultural products, the mobility of agricultural labor and the fundamental differences between agriculture and industry. While the right to strike is a basic right of organized labor, such right must take into account the perishable character and the seasonal nature of agricultural products and must be limited and regulated accordingly. It is the intent of the legislature to provide a means to bargain collectively that is fair and equitable to agricultural employers, labor organizations and employees, to provide orderly election procedures to resolve questions concerning representation of agricultural employees and to declare that certain acts are unfair labor practices that are prohibited and that are subject to control by the police power of this state. The overriding special interest of this state with respect to certain secondary boycott activities originating in this state, but extending across state lines and directed at employers in other states, must be recognized, and such acts must be made unlawful and subject to control by the police power of this state.

23-1382. Definitions

In this article, unless the context otherwise requires:

1. "Agricultural employee, permanent" means any employee who is over sixteen years of age, who has been employed by a particular agricultural employer for at least six months during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. "Agricultural employee,

temporary" means any employee who is over sixteen years of age, who is employed by a particular agricultural employer, who has been so employed during the preceding calendar year and who is engaged in the growing or harvesting of agricultural crops or the packing of agricultural crops if packing is accomplished in the field. If otherwise qualified, a person shall be considered an agricultural employee if an agricultural employer pays the wages of the employee for work performed for the employer's benefit or on his behalf, even though the supervision of the employee, the bookkeeping and the issuance of payroll checks are by a person other than the employer. In calculating a workday of an agricultural employee, one hour or more of employment in any one day shall be considered a workday. "Agricultural employee" also includes any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice and who has not obtained any other regular and substantially equivalent employment. "Agricultural employee" does not include any individual who:

(a) Is employed by his parent or spouse or by an immediate relative.

(b) Has the status of an independent contractor.

(c) Is employed as a supervisor or in a confidential capacity or as a clerical employee or a guard.

(d) Is employed as an executive, professional or technical employee.

(e) Has quit or has been discharged for cause.

(f) Is a tenant or sharecropper and reasonably directs or shares in the management of an enterprise engaged in agriculture.

(g) Is engaged in hauling or stitching functions.

2. "Agricultural employer" means any employer who is engaged in agriculture and who employed six or more agricultural employees for a period of thirty days during the preceding six month period and includes any person who provides labor and services on one or more farms as an independent contractor if such person, for a period of thirty days during the preceding six month period, employed six or more employees in such work. In calculating the number of agricultural employees employed by an agricultural employer or provided by an independent contractor, one hour or more of employment in any one day shall be considered a day of work. Agricultural employer also includes any employer who is engaged in agriculture with less than six agricultural employees and who voluntarily elects to be subject to this article by filing a request in writing with the board.

3. "Agriculture" means all services performed on a farm as defined in section 23-603, including but not limited to the recruiting, housing and feeding of persons employed or to be employed as agricultural employees by agricultural employers.

4. "Board" means the agricultural employment relations board.

5. "Farm" means any enterprise that is engaged in agriculture, that is operated from one headquarters where the utilization of labor and equipment is directed and whose tracts of land, if consisting of separate tracts of land, are located within a fifty mile radius of such headquarters.

6. "Labor dispute" means any controversy between an agricultural employer and his agricultural employees or their representative concerning terms, tenure or conditions of employment or concerning the association or representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment.

7. "Labor organization" means any organization or any agency defined in sections 23-1301 and 23-1321.

8. "Person" means one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers.

9. "Professional employee" means:

(a) Any employee engaged in agricultural work that either:

(i) Is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical or physical work.

(ii) Involves the consistent exercise of discretion and judgment in its performance.

(iii) Is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(iv) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning.

(b) Any employee who has completed the course or courses of specialized intellectual instruction and study described in subdivision (a), item (iv) and is performing such work, or is performing such work or related work under the supervision of a professional person while acquiring specialized instruction.

10. "Representative" means any individual or labor organization.

11. "Supervisor" means any individual who has authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if such authority requires the use of independent judgment.

12. "Ultimate consumer" means the person who purchases an agricultural product for consumption.

13. "Unfair labor practice" means any unfair labor practice listed in section 23-1385.

23-1383. Rights of employees

A. Agricultural employees have the right to self-organization, to bargain directly for themselves, and to form and join or assist labor organizations to bargain collectively through representatives of their own free choosing, or to engage in lawful concerted activity for the purpose of collective bargaining or other mutual aid or protection, and each such employee has the right, without interference from any source, to refrain from any and all of these activities.

B. Agricultural employees also have those rights more particularly defined and described in articles 1 and 3 of this chapter and shall be protected from the practices described in article 4 of this chapter.

23-1384. Rights of employer

An agricultural employer has the following management rights:

1. To manage, control and conduct his operations, including but not limited to the number of farms and their locations, methods of carrying on any operation or practices, kinds of crops, time of work, size and makeup of crews, assignment of work and places of work.

2. To hire, suspend, discharge or transfer employees in accordance with his judgment of their ability.

3. To determine the type of equipment or machinery to be used, the standards and quality of work, and the wages, hours and conditions of work. The terms of employment relating to wages, hours, conditions of work and matters of worker safety, sanitation, health and the establishment of grievance procedures directly relating to a job are subject to negotiation.

4. To work on his own farm in any capacity at any time.

5. To join or refuse to join any labor organization or employer organization.

23-1385. Unfair labor practices; definition

A. It is an unfair labor practice for an agricultural employer:

1. To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in section 23-1383 and articles 1 and 3 of this chapter or to violate the protection of employees from the practices described in article 4 of this chapter.

2. To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it. An agricultural employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

3. To encourage or discourage membership in any labor organization by discrimination in regard to hiring or tenure of employment or any term or condition of employment.

4. To discharge or otherwise discriminate against an agricultural employee because he has filed charges or given testimony under this article.

5. To refuse to bargain collectively with the representatives of his employees, subject to section 23-1389. Nothing in this article shall be construed as requiring an agricultural employer to bargain collectively until a representative of his agricultural employees has been determined by means of a valid secret ballot election.

6. To discharge or otherwise discriminate against any person because he has filed charges or given testimony before the board or a court.

7. To threaten to have discharged any agricultural employee, or threaten to have wages of any agricultural employees reduced, solely because of any labor activity.

B. It is an unfair labor practice for a labor organization or its agents to:

1. Impose any economic sanction, to restrain or coerce agricultural employees in the exercise of their rights or to coerce or intimidate any employee in the enjoyment of his legal rights provided by this article, or to intimidate his family, picket his domicile or injure the person or property of any employee or his family. This paragraph does not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership.

2. Threaten or impose any economic sanction or reprisal against any person who is not a member of the labor organization in the exercise of rights under this article, including but not limited to the right to refrain from any or all concerted activity, or against any person, who is not a member of the labor organization, who refrains from compliance with a union rule, policy or practice that establishes or affects wages, hours or working conditions at such person's place of employment.

3. Restrain, coerce, or threaten or impose any fine or other economic sanction against any person who invokes the processes of the board, or the court, or against an agricultural employer or

employee in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

4. Refuse to bargain collectively with an agricultural employer, provided it is the majority representative of his agricultural employees as determined pursuant to section 23-1389.

5. Cause or attempt to cause an agricultural employer to:

(a) Pay or deliver or agree to pay or deliver any money or other thing of value for services that are not performed or that are not to be performed.

(b) Establish or alter the number of employees to be employed or the assignment of the employees.

(c) Assign work to the employees of a particular employer.

(d) Discriminate in regard to hiring or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. Nothing in this subdivision prohibits agreements between labor organizations and agricultural employers that regulate hiring and tenure of employment on the basis of seniority, and the labor organization is not given power to determine seniority unilaterally.

6. Engage in a secondary boycott as defined in section 23-1321.

7. Induce or encourage or threaten, restrain or coerce any secondary employer or any executive or management employee of any secondary employer to make a management decision not to handle, transport, process, pack, sell or distribute any agricultural commodity of an agricultural employer with whom a labor dispute exists.

8. Induce or encourage the ultimate consumer of any agricultural product to refrain from purchasing, consuming or using such agricultural product by the use of dishonest, untruthful and deceptive publicity. Permissible inducement or encouragement within the meaning of this section means truthful, honest and nondeceptive publicity that identifies the agricultural product produced by an agricultural employer with whom the labor organization has a primary dispute. Permissible inducement or encouragement does not include publicity directed against any trademark, trade name or generic name that may include agricultural products of another producer or user of such trademark, trade name or generic name.

9. Restrain, coerce or threaten an ultimate consumer to prevent him from purchasing, consuming or using such agricultural product.

10. Threaten or engage in arson, libel, slander, injury to person or property or other violent conduct if the objective is to prevent the preparing for market, transporting, handling, displaying for sale, or selling of any agricultural product.

11. Intimidate, restrain or coerce agricultural employers in the exercise of the rights guaranteed by section 23-1384.

12. Picket or cause to be picketed, boycott or cause to be boycotted, or threaten to boycott or picket, or cause to be boycotted or picketed, any agricultural employer if the objective is to induce, encourage, force or require an agricultural employer to recognize or bargain with a labor organization as the representative of his agricultural employees, or the agricultural employees of an agricultural employer to accept or select such labor organization as their collective bargaining representative unless such labor organization is currently certified as the representative of such employees:

(a) If the agricultural employer has lawfully recognized in accordance with this article any other labor organization and a question concerning representation may not appropriately be raised under section 23-1389.

(b) If within the preceding twelve months a valid election under section 23-1389 has been conducted.

(c) If a petition has been filed under section 23-1389.

13. Call a strike unless a majority of the employees within the bargaining unit has first approved the calling of such a strike by secret ballot.

C. The expressing of any views, argument or opinion or the making of any statement, including expressions intended to influence the outcome of an organizing campaign, a bargaining controversy, a strike, lockout or other labor dispute, or the dissemination of such views whether in written, printed, graphic, visual or auditory form, if such expression contains no threat of reprisal or force or promise of benefit, does not constitute or is not evidence of an unfair labor practice or does not constitute grounds for, or evidence justifying, setting aside the results of any election conducted under any of the provisions of this article. A statement of fact by either a labor organization or an agricultural employer relating to existing or proposed operations of the employer or to existing or proposed terms, tenure or conditions of employment with the employer shall not be considered to constitute a threat of reprisal or force or promise of benefit. An employer shall not be required to furnish or make available to a labor organization, and no labor organization shall be required to furnish or make available to an employer, materials, information, time or facilities to enable such employer or labor organization, as the case may be, to communicate with employees of the employer, members of the labor organization, its supporters or its adherents.

D. For the purposes of this section, "bargain collectively" means the performance of the mutual obligation of the agricultural employer and the representative of the agricultural employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment that directly affect the work of employees, or the negotiation of an agreement, or to resolve any question arising thereunder. Bargain collectively includes the furnishing of necessary and relevant information in connection with the negotiation of an agreement or any issue arising under such agreement, or requiring as a condition for entering into

an agreement the execution of a written contract incorporating any agreement reached if requested by either party. The failure or refusal of either party to agree to a proposal, to the making, changing or withdrawing of a lawful proposal or to the making of a concession does not constitute, or is not evidence, direct or indirect, of, a breach of this obligation. The board in any remedial order shall not direct either party to make any concession, agree to any proposal or make any payment of money except to employees who are reinstated with back pay as provided in section 23-1390. This section does not require any agricultural employer to bargain collectively with respect to any management rights. "Management rights", as used in this subsection, includes but is not limited to the right to discontinue the entire farming operation or any part of the operation, to contract out any part of the work of the operation not covered by a labor contract, to sell or lease any of the real or personal property involved in the operation or to determine the methods, equipment and facilities to be used in producing agricultural products or the agricultural products to be produced.

E. If there is in effect a collective bargaining contract covering agricultural employees, the duty to bargain collectively also means that no party to the contract may terminate or modify the contract, unless the party desiring such termination or modification:

1. Serves a written notice on the other party to the contract of the proposed termination or modification not less than sixty days prior to the expiration date of the contract, or if such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification.

2. Offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications.

3. Continues the contract in full force and effect without resorting to a strike or lockout for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later.

F. The duties imposed on agricultural employers, agricultural employees and labor organizations become inapplicable on an intervening certification of the board, under which the labor organization or individual that is a party to the contract has been superseded as or ceased to be the representative of the employees subject to section 23-1389, and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any agricultural employee who engages in a strike within the sixty day period specified in this subsection loses his status as an agricultural employee of the agricultural employer engaged in the particular labor dispute for the purposes of this section and sections 23-1389 and 23-1390, but such loss of status for such employee terminates when he is reemployed by such employer.

23-1386. Agricultural employment relations board; members; terms; appointment

A. An agricultural employment relations board is established that consists of seven members.

B. The governor shall appoint the members of the board. Two of the members shall be appointed as representatives of agriculture employers, two of the members appointed shall be representatives of organized agricultural labor and the three additional members, one of whom shall be the chairman of the board, shall be appointed as representatives of the general public. The term of office of the members is five years. On the initial appointment, one of the labor representatives shall be appointed for a term of one year, one of the representatives of the general public shall be appointed for a term of one year, one of the agricultural representatives shall be appointed for a term of two years, one of the representatives of the general public shall be appointed for a term of two years, one of the agricultural representatives shall be appointed for a term of three years, one of the labor representatives shall be appointed for a term of four years, and one of the public members of the board shall be appointed for a term of five years. Any individual appointed to fill a vacancy of any member shall be appointed only for the unexpired portion of the term of the member he is succeeding. Members of the board may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office but for no other cause.

C. The governor shall appoint two alternate members. One of the alternates shall be appointed as a representative of organized agricultural labor and the other as a representative of agriculture. Alternates shall be appointed for terms of five years. Any individual appointed to fill a vacancy of any alternate shall be appointed only for the unexpired portion of the term of the alternate he is succeeding. Alternates may be removed from office by the governor on notice and a hearing for neglect of duty or malfeasance in office, but for no other cause. No alternate may participate in deliberations of the board except in the absence of a board member representing his area of interest.

D. The governor shall appoint a general counsel of the board. The general counsel is the exclusive legal representative of the board, has final authority, on behalf of the board, with respect to the investigation of charges and the issuance of complaints under section 23-1390 and with respect to the prosecution of such complaints by the board, and has such other duties as the board may prescribe or as may be provided by law. The general counsel shall appoint such assistants as needed to carry out the work of the office.

E. A vacancy on the board does not impair the right of the remaining members to exercise all of the powers of the board, and four members constitute a quorum of the board. The board shall have an official seal that is judicially recognized.

F. The principal office of the board shall be in the city of Phoenix, but it may meet and exercise any of its powers at any other place.

G. The board may meet in executive session on the decision of a majority of the members of the board.

H. Meetings of the board may be called by the chairman or by a majority of the members of the board by giving written notice to the chairman who shall notify all of the members of the board as to the time and place of the board meeting.

23-1387. Powers and duties

A. By one or more of its members or by such agents or agencies as it may designate, the board may prosecute any inquiry necessary to its functions in any part of this state. A member of the board who participates in any such inquiry shall not be disqualified from subsequently participating in a decision of the board in the same case.

B. The board shall adopt rules pursuant to title 41, chapter 6 as may be necessary to carry out this article.

C. The board may also establish offices in such other cities as it deems necessary and shall determine the region to be served by such offices. The board may delegate to the heads of these offices as it deems appropriate its powers under section 23-1389 to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, to determine whether a question of representation exists and to direct an election by a secret ballot and to certify, within a reasonable period of time, the results of such election. The board may review any action taken pursuant to the authority delegated under this subsection by any regional officer on a request for a review of such action filed with the board by any interested party. Any such review made by the board, unless specifically ordered by the board, does not operate as a stay of any action taken by the regional officer. The entire record considered by the board in considering or acting on any such request or review shall be made available to all parties before the consideration or action, and the board's findings and action thereon shall be published as a decision of the board.

23-1388. Officers and employees of the board

A. The board may appoint an executive secretary and such attorneys and other employees as it may from time to time find necessary for the proper performance of its duties. Compensation for all such personnel shall be as determined pursuant to section 38-611.

B. The board may not employ any attorney for the purpose of reviewing transcripts of hearings or preparing drafts of opinions, except that any attorney employed for assignment as a legal assistant to any board member may review such transcripts and prepare such drafts for the board member.

C. No administrative law judge's report may be reviewed, either before or after its publication, by any person other than a member of the board or his legal assistant, and no administrative law

judge may advise or consult with the board with respect to exceptions taken to his findings, rulings or recommendations.

D. At the discretion of the board, attorneys appointed under this section may appear for and represent the board in any case in court.

23-1389. Representatives and elections

A. Representatives selected by a secret ballot for the purposes of collective bargaining by the majority of the agricultural employees in a unit appropriate for such purposes are the exclusive representatives of all of the agricultural employees in such unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment or other conditions of employment. If ratification of any such contract is required, the right to vote in such ratification is limited to the employees in the bargaining unit. Any individual agricultural employee or a group of agricultural employees at any time may present grievances to their agricultural employer and have such grievances adjusted, without the intervention of the bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining contract or agreement then in effect. The bargaining representative may be present at such adjustment.

B. The board shall decide in each case whether in order to ensure to employees the fullest freedom in exercising their rights the unit appropriate for the purposes of collective bargaining shall consist of either all temporary agricultural employees or all permanent agricultural employees of an agricultural employer working at the farm where such employer grows or produces agricultural products, or both. In making unit determinations the extent of a union's extent of organization shall not be controlling. Principal factors should be the community of interest between employees, the same hours, duties and compensation, the administrative structure of the employer and the control of labor relations policies.

C. The board shall investigate any petition and, if it has reasonable cause to believe that a question of representation exists, shall provide for an appropriate hearing on due notice, if such petition has been filed in good faith in accordance with the rules that may be prescribed by the board:

1. By an agricultural employee or group of agricultural employees or any individual or labor organization acting in its behalf alleging that thirty per cent or more of the number of agricultural employees in the unit in question either wish to be represented for collective bargaining and that their employer declines to recognize their representative or assert that the individual or labor organization that has been certified or that is being currently recognized by their employer as the bargaining representative is no longer a representative.

2. By an agricultural employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative or that an individual or labor

organization that has previously been certified as the bargaining representative is no longer a representative.

D. If the board finds on the record of such hearing that a question of representation exists, it shall direct an election by secret ballot and shall certify the results. If a second labor organization files a petition for an election alleging that thirty per cent or more of the employees in the unit in question desire to be represented by that labor organization, the board shall require that the names of both labor organizations appear on the ballot. In any election the voters shall be afforded the choice of "no union". If in a representational election more than one union is on the ballot, and none of the choices receives a majority vote, a second election shall be held. The second election shall be between the union receiving the highest number of votes and "no union". In any election a labor organization shall obtain a majority of all votes cast in that election in order to be certified as the bargaining representative of all of the employees in that unit.

E. In determining whether or not a question of representation exists, the same rules of decision apply irrespective of the identity of the persons filing the petition or the kind of relief sought. In no case may the board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 23-1390.

F. Within five days of receipt of such a petition, the agricultural employer may file a challenge to such petition on the ground that the authorization for the filing of such petition is not current or that such authorization has been obtained by fraud, misrepresentation or coercion. The petition shall not act to stay the election proceeding, but if it is thereafter determined that the authorizations are not current or are obtained by fraud, misrepresentation or coercion the petition will be dismissed.

G. No election may be directed or conducted in any bargaining unit or any subdivision of a bargaining unit within which, in the preceding twelve month period, a valid election has been held. Employees who are engaged in an economic strike and who are not entitled to reinstatement are eligible to vote under such rules as the board finds are consistent with the purposes and provisions of this article in any election conducted within three months after the commencement of the strike. Any agricultural employee who is found to have sought or accepted employment only for the purpose of affecting the outcome of an election is not eligible to vote in an election conducted pursuant to this article for a period of twelve months from the date of that election.

H. Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with rules or decisions of the board.

I. Within ten days after an election is directed by the board or a consent election agreement is approved by the board and on request of the board, the agricultural employer shall furnish to the board a list of agricultural employees in the bargaining unit who are qualified to vote, and this list shall be made available to the organizations or other interested employees involved in the election.

J. On the filing with the board, by thirty per cent or more of the agricultural employees in a bargaining unit covered by a certification or by an agreement between their employer and a labor organization made pursuant to section 23-1385, of a petition alleging the desire that such representation authority be rescinded, the board shall conduct an election by secret ballot of the employees in such unit and shall certify the results to the labor organization and the employer.

23-1390. Prevention of unfair labor practices

A. The board, as provided in this section, may prevent any person from engaging in any unfair labor practice.

B. If it is charged that any person has engaged in or is engaging in any such unfair labor practice, the board, or any agent or agency designated by the board for such purposes, may issue and cause to be served on the person a complaint stating the charges in that respect and containing a notice of hearing before the board or a member of the board or an administrative law judge at least five days after the serving of the complaint. Hearings shall be conducted pursuant to title 41, chapter 6, article 10. No complaint may issue based on any unfair labor practice occurring more than six months before the filing of the charge with the board and the service of a copy of the complaint on the person against whom the charge is made, unless the person so aggrieved was prevented from filing the charge by reason of service in the armed forces, in which event the six month period shall be computed from the day of the person's discharge. Any such complaint may be amended by the member or administrative law judge conducting the hearing or the board in its discretion at any time before the issuance of an order based on the complaint. The person so complained of may file an answer to the original or amended complaint, may appear in person or otherwise and may give testimony at the place and time fixed in the complaint. In the discretion of the board or the member, agent or agency conducting the hearing, any other person may be allowed to intervene in the proceeding and to present testimony.

C. The testimony taken by the board or such member or administrative law judge shall be reduced to writing and filed with the board. Thereafter, in its discretion, the board on notice may take further testimony or hear argument. If on the preponderance of the testimony taken the board determines that any person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue and cause to be served on the person an order requiring the person to cease and desist from the unfair labor practice and shall take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this article. If an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by the employee. The order may further require the person to make reports from time to time showing the extent to which the person has complied with the order. If on the preponderance of the testimony taken the board determines that the person named in the complaint has not engaged in or is not engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint. No order of the board may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to the individual of any back pay, if the

individual was suspended or discharged for cause. If the evidence is presented before a member of the board, or before an examiner or examiners of the board, the member, or the examiner or examiners, as the case may be, shall issue and cause to be served on the parties to the proceedings a proposed report, together with a recommended order, that shall be filed with the board, and if no exceptions are filed within ten days after service of the order on such parties, or within such further period as the board may authorize, such recommended order becomes the order of the board and is as prescribed in the order.

D. Until the record in a case is filed in a court, as provided in this section, the board at any time on reasonable notice and in a manner as it deems proper may modify or set aside, in whole or in part, any finding or order made or issued by it.

E. The board may petition the superior court in any county where the unfair labor practice in question occurred or where the person resides or transacts business for the enforcement of the order and for appropriate temporary relief or a restraining order. On the filing of the petition the court shall cause notice to be served on the person, and thereupon has jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it deems just and proper and may make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the board.

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

G. If an order of the board made pursuant to this section is based in whole or in part on facts certified following an investigation pursuant to section 23-1389 and there is a petition for the enforcement of the order, the certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsection E of this section, and the decree of the court enforcing the order of the board shall be made and entered based on the pleadings, testimony and proceedings set forth in the transcript. The court shall not enforce any order of the board that rests, in whole or in part, on evidence adduced from witnesses who have not testified under oath and who have not been subject to cross-examination by opposing parties.

H. Unless specifically ordered by the court, the commencement of proceedings under subsection E or F of this section does not operate as a stay of the board's order.

I. Petitions filed under this article shall be heard expeditiously, and if possible within ten days after they have been docketed.

J. On issuance of a complaint as provided in subsection B of this section charging that any person has engaged in or is engaging in an unfair labor practice, the board may petition the superior court in any county where the unfair labor practice in question is alleged to have occurred or where the person resides or transacts business for appropriate temporary relief or a restraining order. On the filing of any such petition the court shall cause notice to be served on the person and thereupon has jurisdiction to grant to the board such temporary relief or restraining order as it deems just and proper.

K. If it is charged that any person has engaged in an unfair labor practice, the preliminary investigation of the charge shall be made immediately and shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer to whom the matter may be referred has reasonable cause to believe that the charge is true and that a complaint should issue, the officer shall petition, on behalf of the board, the superior court in the county where the unfair labor practice in question has occurred or is alleged to have occurred, or where the person alleged to have committed the unfair labor practice resides or transacts business, for appropriate injunctive relief pending the final adjudication of the board with respect to the matter. On the filing of any such petition the superior court has jurisdiction to grant any injunctive relief or temporary restraining order it deems just and proper, notwithstanding any other law, except that no temporary restraining order may be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and the temporary restraining order is effective for no longer than five days and will become void at the expiration of such period. On the filing of any such petition the court shall cause notice to be served on any person complained against in the charge and the person, including the charging party, shall be given an opportunity to appear in person or by counsel and present any relevant testimony. For the purposes of this subsection, the superior court is deemed to have jurisdiction of a labor organization either in the county in which the organization maintains its principal office or in any county in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process on an officer or agent constitutes service on the labor organization and makes the organization a party to the suit.

23-1391. Investigatory powers

A. The board, or its duly authorized agent or agencies, shall have access to, at all reasonable times, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The board or any member of the board on application of any party to such proceedings forthwith shall issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the board to revoke, and the board shall revoke, the subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the board, or any agent or agency designated by the board for such purposes, may administer oaths and affirmations, examine witnesses and receive evidence. The attendance of witnesses and the production of the evidence may be required from any place in this state at any designated place of hearing.

B. In case of contumacy or refusal to obey a subpoena issued to any person, the superior court in the county within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, on application by the board, has jurisdiction to issue to

such person an order requiring the person to appear before the board, or a member, agent or agency of the board, to produce evidence if so ordered or to give testimony touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as contempt.

C. Complaints, orders and other process and papers of the board, or a member, agent or agency of the board, may be served either personally, by registered or certified mail, by telegraph or by leaving a copy at the principal office, place of business or residence of the person required to be served. The verified return by the individual personally serving or leaving the copy, setting forth the manner of the service, and the return post office receipt, if registered or certified, or telegraph receipt and mailed or telegraphed as provided in this subsection, are proof of service. Witnesses summoned before the board or its members, agent or agency shall be paid the same fees and mileage that are paid witnesses in the superior court and witnesses whose depositions are taken, and the persons taking the depositions are entitled to the same fees as are paid for like services in the superior court.

D. The departments and agencies of this state, if directed by the governor, shall furnish the board, on its request, with all unprivileged records, papers and information in their possession relating to any matter before the board.

23-1392. Violation; classification

Any person who knowingly resists, prevents, impedes or interferes with any member of the board or any of its agents or agencies in the performance of duties pursuant to this article or who violates any provision of this article is guilty of a class 1 misdemeanor. This section does not apply to any activities carried on outside this state.

23-1393. Court jurisdiction

A. Any person who is aggrieved or is injured in his business or property by reason of any violation of this article, or a violation of an injunction issued as provided in this section, may sue in the superior court in the county having jurisdiction of the parties for recovery of any damages resulting from the unlawful action, regardless of where such unlawful action occurred and regardless of where such damage occurred, including costs of the suit and reasonable attorney fees. On the filing of the suit the court also has jurisdiction to grant injunctive relief or a temporary restraining order as it deems just and proper. Petitions for injunctive relief or temporary restraining orders shall be heard expeditiously. Petitions for temporary restraining orders alleging a violation of section 23-1385 shall be heard forthwith and if the petition alleges that substantial and irreparable injury to the petitioner is unavoidable such temporary restraining orders may be issued pursuant to rule 65 of the Arizona rules of civil procedure.

B. In the case of a strike or boycott, or threat of a strike or boycott, against an agricultural employer, the court may grant, and on proper application shall grant as provided in this section, a ten day restraining order enjoining such a strike or boycott, provided that if an agricultural employer invokes the court's jurisdiction to issue the ten day restraining order to enjoin a strike as provided by this subsection, the employer as a condition must agree to submit the dispute to binding arbitration as the means of settling the unresolved issues. If the parties cannot agree on an arbitrator within two days after the court awards a restraining order, the court shall appoint one to decide the unresolved issues. Any agricultural employer is entitled to injunctive relief accorded by rule 65 of the Arizona rules of civil procedure on the filing of a verified petition showing that his agricultural employees are unlawfully on strike or are unlawfully conducting a boycott, or are unlawfully threatening to strike or boycott, and that the resulting cessation of work or conduct of a boycott will result in the prevention of production or the loss, spoilage, deterioration or reduction in grade, quality or marketability of an agricultural commodity or commodities for human consumption in commercial quantities. For the purpose of this subsection, an agricultural commodity or commodities for human consumption with a market value of five thousand dollars or more constitutes commercial quantities.

C. For the purpose of this article, the superior court has jurisdiction of a labor organization in this state if such organization maintains its principal office in this state, or if its duly authorized officers or agents are engaged in promoting or protecting the interests of agricultural employee members or in the solicitation of such prospective members in this state.

D. The service of any summons, subpoena or other legal process of the superior court on an officer or agent of a labor organization, in his capacity as such, constitutes service on the labor organization.

E. Any labor organization that represents employees as defined in this article, and any agricultural employer, are bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of this state.

F. For the purposes of this article, in determining whether any person is acting as an agent of another person in order to make the other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified is not controlling. Nothing in this section shall be deemed to preclude an agent being sued both in his capacity as an agent and as an individual.

23-1394. Scope of article

This article applies only to such persons, labor organizations or activities as are not within the jurisdiction of the national labor relations act or the jurisdictional guidelines established by the national labor relations board.

23-1395. Limitations

A. Nothing in this article, except as otherwise specifically provided, shall be construed as to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

B. Nothing in this article prohibits any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this article may be compelled to deem such supervisors as agricultural employees for the purpose of any law, either national or local, relating to collective bargaining.

DEPARTMENT OF AGRICULTURE (F-17-0502)
Title 3, Chapter 7, Article 1, Administration and Procedures; Article 2, Commercial Devices; Article 3, Packaging, Labeling, and Method of Sale; Article 4, Price Verification and Price Posting; Article 5, Public Weighmasters; Article 6, Registered Service Agencies and Representatives; Article 7, Motor Fuels and Petroleum Products; Article 9, Gasoline Vapor Control for Sites with Both Stage I and Stage II Vapor Recovery Systems; Article 10, Stage I Vapor Recovery

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-3**

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

FROM: Chris Kleminich, Staff Attorney

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF AGRICULTURE (F-17-0502)**
Title 3, Chapter 7, Article 1, Administration and Procedures; Article 2, Commercial Devices; Article 3, Packing, Labeling, and Method of Sale; Article 4, Price Verification and Price Posting; Article 5, Public Weighmasters; Article 6, Registered Service Agencies and Representatives; Article 7, Motor Fuels and Petroleum Products; Article 9, Gasoline Vapor Control for Sites with Both Stage I and Stage II Vapor Recovery Systems; Article 10, Stage I Vapor Recovery

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This five-year-review report from the Arizona Department of Agriculture (Department) covers 85 rules and tables in A.A.C. Title 3, Chapter 7, related to the Department's Weights and Measures Services Division (Division). Effective July 1, 2016, what was formerly the Department of Weights and Measures was transferred to the Department of Agriculture.

On April 5, 2017, the Division filed a Notice of Proposed Rulemaking with the Secretary of State's Office.[i] As detailed in Appendix A to the report, the rulemaking is intended to update terminology in the rules to reflect their transfer to the Department of Agriculture, and to streamline and clarify many of the rules. The Department intends to finalize this rulemaking by the end of 2017.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **<u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>**

Yes. The Department has certified its compliance with A.R.S. § 41-1091.

[i] Staff anticipates that this Notice will be published in the April 28, 2017 edition of the *Administrative Register*.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

Yes. The Department indicates that the rules are generally effective in achieving their objectives.

The Division received a comment in 2015 from Musket Corporation on Section 718, related to requirements for the blending of biodiesel. Musket indicated that some provisions in the rule, Arizona is more stringent than many other states. The Division states that it is working with stakeholders to streamline the requirements in that rule and others, while continuing to comply with A.R.S. § 3-3433(M), which requires the Division to adopt rules related to many aspects of biofuels and biofuel blends.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

Yes. The Department has received many public comments on the rules, which have been included as Appendix B to the report. The comments stem from outreach efforts that began in 2015, prior to the transition of the Division to the Department of Agriculture, by holding workshops to solicit feedback on all the Division's rules. Following the transition to the Department of Agriculture, additional workshops have been held to facilitate the rulemaking effort.

4. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites to A.R.S. § 3-3414(A)(4) as general authority for the rules, under which, in relevant part, the Division must "[a]dopt any rules necessary to carry out this chapter [Title 3, Chapter 19, Weights and Measures Services Division] and adopt reasonable rules for the enforcement of this chapter." Specific authority for each rule is listed in the report.

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

Yes. The Department indicates that several rules need to be amended due to inconsistencies with HB 2171, signed by the Governor on May 12, 2016. In addition, some rules use the outdated term "service station" instead of the current term "motor fuel dispensing site." Also, Section 702 does not incorporate all stage I, some stage II, and some most recent California Air Resources Board Executive Orders by reference. Section 702 is proposed for repeal in the Department's upcoming rulemaking.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates that it enforces the rules to the extent that they are consistent with statutes.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that, with the exceptions of areas in which the rules are inconsistent with statutes or other rules, the rules are clear, concise, and understandable.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

In November 2010 and January 2011, the Environmental Protection Agency (EPA) issued partial waivers allowing the use of gasoline containing 10 to 15 percent by volume of ethanol (commonly referred to as E15). The Arizona rules currently prohibit the sale of gasoline containing greater than 10 percent ethanol. In the proposed rulemaking, the Department is removing these limitations and making other clarifying changes to ensure consistency with EPA standards.

b. If so, is there statutory authority to exceed the requirements of federal law?

The Department has no statutory authority to exceed the requirements of federal law for the matter discussed above.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

Yes. The rules require issuance of a regulatory permit, license or agency authorization.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

The Department indicates that its permits and licenses comply with A.R.S. § 41-1037.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. In its 2012 report, the Division noted minor problems with consistency and clarity in the rules. The Department indicates that rulemakings in 2013 and 2015 addressed the issues identified.

Conclusion

As noted above, the Department intends to complete a comprehensive rulemaking by the end of 2017. The Council will have the opportunity to review and vote upon that rulemaking. Staff believes that the report meets the requirements of A.R.S. § 41-1056 and R1-6-301, and as such, this analyst recommends that the report be approved.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-3**

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

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF AGRICULTURE (F-17-0502)**
Title 3, Chapter 7, Article 1, Administration and Procedures; Article 2, Commercial Devices; Article 3, Packing, Labeling, and Method of Sale; Article 4, Price Verification and Price Posting; Article 5, Public Weighmasters; Article 6, Registered Service Agencies and Representatives; Article 7, Motor Fuels and Petroleum Products; Article 9, Gasoline Vapor Control for Sites with Both Stage I and Stage II Vapor Recovery Systems; Article 10, Stage I Vapor Recovery

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I have reviewed the five-year-review report submitted by the Arizona Department of Agriculture for Title 3, Chapter 7, Articles 1 through 7 and 9 through 10. An economic, small business, and consumer impact statement (EIS) was prepared as part of the rulemaking process. The five-year review reflected on this analysis. The following includes comments on the analysis provided for compliance with A.R.S. § 41-1056.

1. <u>Economic Impact Comparison</u>

The rules reflected in this five-year review were revised last in a 2015 rulemaking for 21 A.A.R. 1693. This rulemaking established the requirements for decommissioning stage II vapor recovery systems at gasoline dispensing sites, and requirements for remaining Stage I vapor recovery systems. At the time, the Department estimated that there would be a one-time up-front cost that would offset costs in future years. The Department has since determined that their initial analysis was correct, and to date, 373 stations have been decommissioned.

2. <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Department has determined that, overall, the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

Written comments by stakeholders were provided with the review material. Responses from the Department were included with the comments. Most of the comments requested clarification on definitions and legal requirements sustaining the rules. Many asked for additional language be made to the rules to provide detailed understanding of expectations and standards for the rules. The Department consistently responded with clarification on where further information could be found and if the proposed detail would be added and when.

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

DOUGLAS A. DUCEY
GOVERNOR

MARK W. KILLIAN
DIRECTOR

ARIZONA DEPARTMENT OF AGRICULTURE

WEIGHTS AND MEASURES SERVICES DIVISION
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February 21, 2017

Nicole A. Ong
ADOA – Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

Dear Ms. Ong,

Attached is the Department of Agriculture, Weights and Measures Services Division Five-Year-Review Report. As you may be aware, effective July 1, 2016, the Arizona Department of Weights and Measures was transferred to the Department of Agriculture. This Five-Year-Rule report is for the Department of Weights and Measures Title 20, Chapter 2, which is currently under the Department of Agriculture Title 3, Chapter 7.

The Department has reviewed all of the rules except R3-7-605. The Department does not intend for any rules except R3-7-605 to expire under A.R.S. §41-1056(J). This office certifies it is in compliance with A.R.S. §41-1091.

Please contact Michelle Wilson, Associate Director, Weights and Measures Services Division, at (602) 771-4933 or mwilson@azda.gov with any questions or concerns regarding this report.

Sincerely,

Mark W. Killian
Director

DOUGLAS A. DUCEY
GOVERNOR

MARK W. KILLIAN
DIRECTOR

ARIZONA DEPARTMENT OF AGRICULTURE

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The Department has reviewed all of the rules except R3-7-605. The Department does not intend for any rules except R3-7-605 to expire under A.R.S. §41-1056(1). This office certifies it is in compliance with A.R.S. §41-1091.

Please contact Michelle Wilson, Associate Director, Weights and Measures Services Division, at (602) 771-4933 or mwilson@azda.gov with any questions or concerns regarding this report.

Sincerely,

Mark W. Killian
Director

WEIGHTS AND MEASURES SERVICES DIVISION

A.A.C. Title 3, Chapter 7, Articles 1 through 7 and 9 through 10

February 2017

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2016 Five-year-review Report

Department of Agriculture
Weights and Measures Services Division

I. Introduction

Under A.RS.§ 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (GRRC). The schedule for reviews is determined by GRRC. The report for the Weights and Measures Services Division's ("Division") (formerly Department of Weights and Measures) rules listed under A.A.C. Title 3, Chapter 7 is due February 28, 2017.

The Division promotes equity and fairness in Arizona commerce involving weighing or measuring for commercial purposes. This is done by regulating and supporting businesses in a manner that protects both the buyer and sellers interests. The Division also protects air quality through the implementation of two air quality programs: a vapor recovery program at gas stations and a cleaner-burning gasoline (CBG) program. The Division carries out this mission though licensing and testing weighing and measuring devices, maintaining the State standards of weight and measure based Federal standards, and licensing and calibration of service technicians responsible for calibrating the devices. Additionally, we license vapor recovery testers, entities regulated under the CBG program, and conduct inspections to verify that air quality standards are met.

Statute designates the Director of the Arizona Department of Agriculture **(ADA)** as the head of the Division and designates the Associate Director with authority over and responsibility for enforcing the Division's requirements.

II. Information Identical For All Rules

1. Statutory Authority

All of the rules are generally authorized by A.R.S. § 3-3414(A)(4), which provides the Division with authority to make rules necessary to carry out A.R.S. Title 3, Chapter 19 and reasonable rules to enforce the Chapter. Additional authority is identified under the analysis of the rules below.

3. Effectiveness of the rules

Unless otherwise stated in this report, the Division believes the rules effectively achieve their objectives.

4. Consistency with statutes and other rules

The Division determined that there are some inconsistencies that exist based on recently passed legislation and a few minor inconsistencies, which are noted in the discussion of individual rules. As discussed in more detail in sections 7 and 11, the Division has been working with stakeholders to streamline and update rules, which addresses the inconsistencies identified.

5. Agency enforcement policy

The Division enforces the rules to the extent that they are consistent with the statutes.

6. Clarity, conciseness, and understandability of the rules

The Division determined that except for a few minor inconsistencies, which are noted in the discussion of individual rules, the rules are clear, concise, and understandable.

7. Written criticisms regarding the rules received during the last five years

The Division began holding stakeholder meetings in July 2014 to gain stakeholder feedback to update and streamline the biofuel and general fuel quality rules. In early

2015, prior to the transition of the Department of Weights and Measures to the Department of Agriculture, workshops were held to solicit feedback regarding all rules. Following the transition to the Department of Agriculture, additional workshops were held to further these efforts and to complete this rulemaking effort. While most of the feedback provided centers around technical requirements related to biofuels and fuel quality, there are recommended updates to streamline the hearing process, price posting requirements, weighmaster requirements, and transition to the Department of Agriculture that have been incorporated into statute. The Division has considered the feedback provided and anticipates submittal of a proposed rule to the Secretary of State soon. A copy of the draft rules which are being finalized for submittal to the Secretary of State are included in Appendix A. A copy of written comments received in response to stakeholder workshops are included in Appendix B.

8. Economic, small business, and consumer impact comparison

The Division believes the economic, small business, and consumer impact statement prepared on the last making of each rule was accurate and complete.

2015 Rulemaking (21 A.AR. 1693)

The rules last made in this rulemaking are R20-2-101, R20-2-901, R20-2-902, R20-2-903, R20-2-904, R20-2-906, R20-2-907, R20-2-908, R20-2-909, R20-2-9IO, R20-2-913, R20-2-I001, R20-2-I002, R20-2-I003, R20-2-I004, R20-2-I005, R20-2-I006, R20-2-I007, R20-2-I008, R20-2-I009, R20-2-I010, R20-2-I011, R20-2-I012, R20-2-I013, and Table 1.

This rulemaking established the requirements for decommissioning stage II vapor recovery systems at gasoline dispensing sites and requirements for remaining Stage I vapor recovery systems. When this rulemaking was done, the Division estimated there would be a one-time up-front cost to decommission the stage II vapor recovery systems that would be offset in future years due to reduced costs from no longer needing to purchase and maintain the systems. Stage II decommissioning began at gasoline dispensing sites on October 1, 2016. To date, 373 stations have been

decommissioned. There are a total of approximately 1,060 stations that will need to decommission in accordance with the requirements by no later than September 30, 2018.

The Department has found these rules to be clear and effective for implementation of the new decommissioning program and has received comments from the regulated community that the program is working successfully. In the draft proposed rules, we are making one update to match current practices that allows continued flexibility to gasoline station owners that would like to change the year in which they decommission site equipment. This change allows flexibility to station owners to remove equipment sooner or later depending on budgetary needs or remove high-maintenance equipment sooner to avoid additional costs without impacting the overall program or air quality goals.

2013 Rulemaking {19 A.A.R. 3325)

The rules last made in this rulemaking are R20-2-708, R20-2-709, R20-2-718, R20-2- 751, and R20-2-752, and Table A.

This rulemaking corrected a minor clerical corrections and a technical correction related to a correlation equation in a test method used by refiners to certify cleaner burning gasoline. When this rulemaking was done, the Division estimated it would have minimal economic impact because refiners were already using the correct equation to comply with federal and state law.

9. Any analysis submitted that compares the rule's impact.
   No analysis has been submitted.

10. The agency's progress toward completing the needed actions identified in the previous SYRR.
    Minor problems with consistency and clarity were identified during the last 5 year rule review. The rules have been clarified during previous rulemakings. Additionally, the Division has held several workshops to perform significant updates to

the rules which are anticipated to be done in 2017. These updates will incorporate changes to improve consistency and clarity.

11. A determination that the rule imposes the least burden and costs to regulated persons including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

    The Division believes that once the changes indicated in this report are implemented, the rules will impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, which is to protect the public and environment and encourage economic growth.

    To protect the public, the Division is required to license commercial devices, public and deputy weighmasters, and registered service agencies and registered service representatives. To obtain a license, it is necessary to comply with the procedures established in rule.

    The Division uses inspections and enforcement actions to protect the public and environment. Those subject to the Division's oversight incur the minimal expense of allowing an inspection. Civil penalties can be avoided by complying with required standards.

    The rules contain some paperwork requirements. For example, a public or deputy weighmaster is required to maintain weight certificates and those who transfer custody or title to a motor fuel are required to maintain product transfer documents. There are also registration and reporting requirements regarding production, transportation, distribution, and sale of biofuels, which are designed to protect the public and environment. Many of the paperwork required is reported online to make reporting and recordkeeping easier for the regulated community.

The Department has been working with stakeholders to streamline and reduce the regulatory burden on regulated entities. Based on feedback from stakeholders, the Department will be proposing rules to reduce the regulatory burden in several areas. Examples include removing requirements for deputy public weighmasters to take and pass examinations, reduction of biofuel reporting, sampling, and stringent quality control plan approval, allowance of electronic signature and seals on weighmaster weight tickets, modification of enforcement requirements to allow discretion for issuance of reduced civil penalties, and removal of deadline requirements for requesting alternate vapor recovery decommissioning dates.

12. Determination that Rules are not more Stringent than Corresponding Federal Law. The Division has received a comment from Musket Corporation that portions of R3-7-718 are more stringent than other states. While there is not a corresponding federal law, we are aware that these requirements are stringent and have been working with stakeholders to streamline the requirements while continuing to comply with the statutory requirements in ARS 3-3433(M) and protect consumers. Proposed updates to these rules are included in Appendix A.

In November 2010 and January 2011, the Environmental Protection Agency issued partial waivers allowing the use of gasoline containing 10 to 15 percent by volume of ethanol (commonly referred to as E15). The current rules prohibit the sale of gasoline containing greater than 4.0 weight percent oxygen or 10 volume percent ethanol. In the proposed rulemaking (Appendix A), the Division is removing these limitations and clarifying that E15 may be sold in areas outside of the cleaner-burning gasoline (CBG)-covered area. The CBG covered area will continue to require gasoline containing 10 volume percent ethanol in the winter and no more than 10 volume percent ethanol in the summer as required by the statutes and rules that are part of the federally-enforced State Implementation Plan approved by EPA.

13. Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit.

The Division permits and licenses comply with A.R.S. § 41-1037. The only rule which meets this criteria is R3-7-601 (previously R20-2-601), Qualifications; License and Renewal Application Process. This rule's amendment became effective October 9, 2010 and updated the requirements for third-party registered service agencies (RSA) to obtain a license; however, this is a general permit so it satisfies the requirements of A.R.S. § 41-1037.

14. Proposed action

On April 5, 2017, the Division filed a Notice of Proposed Rulemaking with the Secretary of State's Office. The rulemaking is intended to update the rules with respect to the transition from the Arizona Department of Weights and Measures to the Department of Agriculture and to streamline and clarify rules as discussed under previous sections and included in Appendix A. The Division intends to finalize this rulemaking by the end of 2017.

III. Information That Is Different For Each Rule

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

1. Authorization

   This rule is authorized by A.R.S. § 3-3414(A)(4) and addresses all of A.R.S. Title 3, Chapter 19.

2. Objective

   The objective of this rule is to make the rules clear and understandable by defining terms used in rule and statute.

R3-7-102. Metrology Laboratory Testing and Calibration Fees

1. Authorization

   This rule is authorized by A.R.S. § 3-3416(H).

2. Objective

   The objective of this rule is to specify the fees charged by the Division for services provided by the State Metrology Laboratory.

R3-7-103. Licensing and Fees

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3451(B), 3-3452(A), 3-3453(B), and 3-3454(C)(5).

2. Objective

   The objective of this rule is to provide needed detail about enforcement of the fees established in statute for licensing a commercial device, public or deputy weighmaster, registered service agency, or registered service representative.

R3-7-104. Administrative Enforcement Action

1. Authorization

   This rule is authorized by A.RS. §§ 3-3414, 3-3415, and 3-3475.

2. Objective

The objective of this rule is to specify standards for progressive enforcement actions taken by the Division for a violation of statute or rule regarding commercial devices, vapor recovery systems, fuel quality and labeling, packaging, price verification and posting, weighmasters, and registered service agencies and representatives.

R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct

1. Authorization

This rule is authorized by A.R.S. § 41-1073.

2. Objective

The objective of this rule is to specify the maximum time-frames within which the Division will act on a license application.

R3-7-109. Administrative Hearing Procedures

1. Authorization

This rule is authorized by A.R.S. § 41-1092 et seq.

2. Objective

The objective of this rule is to specify that the Division conducts hearings using the procedures set forth in the Arizona Administrative Procedure Act.

R3-7-110. Motion for Rehearing or Review

1. Authorization

This rule is authorized by A.R.S. § 41-1092.09.

2. Objective

The objective of this rule is to specify the procedure for making a motion for rehearing or review of a Division decision, the grounds on which the Division will grant a motion, and the procedure the Division uses to act on a motion for rehearing or review.

Table 1. Time-frames

1. Authorization

This rule is authorized by A.R.S. § 41-1073.

2. Objective

The objective of this rule is to set out in table form the maximum time-frames within which the Division acts on a license application and the time an applicant has to respond to a request for additional information.

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201. Licensing Process

1. Authorization

This rule is authorized by A.R.S. § 3-345l(B).

2. Objective

The objective of this rule is to provide detail regarding the statutory requirement that a commercial device be licensed and the information required to be on a license application.

R3-7-203. Approval, Installation, and Sale of Devices

1. Authorization

This rule is authorized by A.RS.§ 3-3413.

2. Objective

The objective of this rule is to establish the specifications, tolerances, and other technical requirements a commercial device must meet and to provide an exception for commercial devices installed or placed in use before January 1, 1975. The rule also requires that a remanufactured commercial device be marked as remanufactured. All commercial devices used in this state are required to be NTEP (National Type Evaluation Program) or CTEP (California Type Evaluation Program) approved.

R3-7-204. Livestock and Vehicle Scale Installation

1. Authorization

This rule is authorized by A.RS. § 3-3413.

2. Objective

The objective of this rule is to set forth the specifications, tolerances, and other technical requirements in Handbook 44 applicable to vehicle and livestock scales and add requirements not specified in Handbook 44.

ARTICLE 3. PACKAGING, LABELING AND METHOD OF SALE

R3-7-302. Handbook 130 and 133

1. Authorization

This rule is authorized by A.RS. §§ 3-3414(A)(7) and (A)(18) and 3-3431.

2. Objective

The objective of this rule is to require a retail seller to comply with the packaging, labeling, and method of sale requirements in Handbook 130 and to require that packaged commodities are weighed, measured, and inspected using sampling and testing procedures in Handbook 133. The rule also requires a retail seller to ensure that the price of each item purchased is displayed to the purchaser at the check-out location. The rule also specifies labeling requirements for nurseries.

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

1. Authorization

This rule is authorized by A.RS.§ 3-3414(A)(4), § 3-3431(F)(4).

2. Objective

The objective of this rule is to provide information regarding how the Division chooses sample items for a price-posting inspection and provides guidance regarding what is and is not a price-posting violation.

3. Consistency with statutes and other rules

HB 2171, signed by the Governor on May 12, 2016, removed requirements under A.R.S. 3-3431(M) and (N) regarding price posting for packages available for sale only with the assistance of a salesperson at a service counter. This is being addressed in the proposed rulemaking currently underway.

ARTICLE 5. PUBLIC WEIGHMASTERS

R3-7-501. Qualifications; License and Renewal Application Process

1. Authorization

This rule is authorized by A.R.S. § 3-3453.

2. Objective

The objective of this rule is to specify the qualifications to be licensed as a public weighmaster or deputy public weighmaster and the procedure for applying for a license or license renewal.

3. Consistency with statutes and other rules

HB 2171, signed by the Governor on May 12, 2016, streamlined weighmaster requirements under A.R.S. 3-3453(A)(4) and (D) to allow the agency to waive the examination for Deputy Weighmasters and require training provided by the Public Weighmaster. This is being updated in the proposed rulemaking currently underway as part of our efforts to streamline and modernize the rules.

R3-7-502. Duties

1. Authorization

This rule is authorized by A.R.S. § 3-3453.

2. Objective

The objective of this rule is to specify the duties of a public weighmaster.

R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action

1. Authorization

This rule is authorized by A.RS.§§ 3-3414, 3-3453 and 3-3472.

2. Objective

The objective of this rule is to specify the grounds on which the Division may deny a public weighmaster license or impose discipline on a public weighmaster.

R3-7-504. Scales and Vehicle Weighing

1. Authorization

This rule is authorized by A.RS. §§ 3-3413, 3-3451, and 3-3453.

2. Objective

The objective of this rule is to describe the manner in which a legal weight determination is made and to indicate that the owner or user of a weighing device is responsible for the accuracy of the device and that device must be licensed by the Division.

R3-7-505. Weight Certificates

1. Authorization

This rule is authorized by A.RS. §§ 3-3414(A)(4) and 3-3453.

2. Objective

The objective of this rule is to specify the information required on a weight certificate, the procedure for issuing a weight certificate, and the time that a weighmaster is required to maintain a copy of weight certificates issued.

R3-7-506. Seal of Authority

1. Authorization

This rule is authorized by A.RS.§§ 3-3414(A)(4) and 3-3453.

2. Objective

The objective of this rule is to specify proper use by a public weighmaster of a seal of authority to certify weight certificates.

R3-7-507. Prohibited Acts

1. Authorization

This rule is authorized by A.R.S. § 3-3453.

2. Objective

The objective of this rule is to specify prohibited acts regarding public weighing and weight certificates.

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

RJ-7-601. Qualifications; License and Renewal Application Process

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454, and 3-3471.

2. Objective

The objective of this rule is to specify the information that must be provided in an application for a license as a registered service agency (RSA), third-party registered service agency, or registered service representative (RSR). The rule also specifies the examination requirement for licensure as a registered service representative, distinguishes between a RSR no. 1 and no. 2, and specifies the specific materials and knowledge that RSRs must possess.

RJ-7-602. Duties

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454(H), and 3-3471.

2. Objective

The objective of this rule is to specify the responsibilities of a registered service agency and a registered service representative regarding certifying commercial devices; performing vapor recovery tests; completing, submitting, and retaining placed-in-service reports and associated documents; and using and maintaining testing equipment.

RJ-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454, and 3-3472.

2. Objective

The objective of this rule is to specify the grounds for denying a license or renewal of a license to a registered service agency or registered service representative. The rule also indicates that disciplinary action may be taken against a registered service representative or registered service agency licensee that is not qualified or that violates statute or rule.

R3-7-604. Prohibited Acts

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(E), 3-3454(A), and 3-3471.

2. Objective

The objective of this rule is to protect the public by reiterating that a license is required to act as a registered service agency or registered service representative and specifying acts that are prohibited for a registered service agency or registered service representative.

R3-7-701. Definitions

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(4) and (14).

2. Objective

The objective of this rule is to make the rules regarding motor fuels clear and understandable by defining terms used in rule and statute.

3. Consistency with statutes and other rules

HB 2171, signed by the Governor May 12, 2016, updated several fuel-related definitions under A.R.S. 3-3401, including biodiesel, E85, gasoline, and motor fuel. These definitions are being updated in the proposed rulemaking currently underway.

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-702. Material Incorporated by Reference

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433(C).

2. Objective

   The objective of this rule is to incorporate by reference national standards and test methods for motor fuel and blending components. It also adopts emission models for use in certifying CBG (Cleaner Burning Gasoline).

3. Consistency with statutes and other rules

   This rule neglects to include all stage I, some stage II, and some most recent California Air Resources Board Executive Orders. A.R.S. 3-3512(A) and 3-3515(A) allow the use of equipment certified by (CARB) either as of or after March 31, 2001. Since the statute clearly states the approved equipment, this rule is outdated and is proposed for deletion in the proposed rulemaking currently underway.

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers

1. Authorization

   This rule is authorized by A.R.S. § 3-3414(A)(4).

2. Objective

   The objective of this rule is to specify that the Division shall return to the owner or operator of a motor fuel dispensing site any motor fuel collected from the site during an inspection.

3. Consistency with statutes and other rules

   The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

R3-7-704. Price and Grade Posting on External Signs

1. Authorization

This rule is authorized by A.R.S. §§ 3-3431(C) and (J) and 3-3433(B).

2. Objective

The objective of this rule is to protect the public by establishing standards for the price and grade posting on an external sign that the owner or operator is required to have at a motor fuel dispensing site.

3. Consistency with statutes and other rules

The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

R3-7-705. Price, Octane, and Lead Substitute Notification on Dispensers

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(7), 3-3431(C) and (J), and 3-3433(A) and (B).

2. Objective

The objective of this rule is to protect the public by establishing standards for the display of price, octane, and lead-substitute notices that an owner or operator is required to post on a motor fuel dispenser at a motor fuel dispensing site.

3. Consistency with statutes and other rules

The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

R3-7-706. Unattended Retail Dispensers

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(4) and 3-3433(B).

2. Objective

The objective of this rule is to require the owner or operator of an unstaffed motor fuel dispensing site to conspicuously display information needed to contact the owner or operator.

3. Consistency with statutes and other rules

The rule uses the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

RJ-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

1. Authorization

This rule is authorized by A.R.S. § 3-3433(B), (O), and (P).

2. Objective

The objective of this rule is to facilitate tracking of the transfer of motor fuel other than Arizona CBG and AZRBOB by establishing information that must appear on the product transfer documents and recordkeeping and to establish recordkeeping requirements.

3. Consistency with statutes and other rules

HB 2171, signed by the Governor May 12, 2016, removed requirements under A.R.S. 3-3433(L) for labeling the biodiesel content in diesel fuel if it is five percent or less and modified requirements under A.RS. 3-3433(P) for the final destination inclusion on product transfer documents. This is being updated in the proposed rulemaking currently underway.

RJ-7-708. Gasoline Ethanol Blends

1. Authorization

This rule is authorized by **A.R.S.** §§ 3-3414(D), 3-3491, 3-3492, and 3-3495.

2. Objective

The objective of this rule is to establish the maximum amount of ethanol that may be in a gasoline oxygenate blend and standards for oxygenate blends. The rule incorporates the EPA waiver under the Clean Air Act regarding oxygenate.

RJ-7-709. Retail Oxygenated Fuel Labeling

1. Authorization

This rule is authorized by A.R.S. § 3-3414(A)(16).

2. Objective

The objective of this rule is to protect the public by requiring that motor fuel dispensers be labeled with information regarding the amount of oxygenate in the motor fuel dispensed. The rule specifies the size and color of the label as well as information required regarding the oxygenate.

RJ-7-710. Blending Requirements

1. Authorization

This rule is authorized by A.R.S. § 3-3491.

2. Objective

The objective of this rule is to establish a manner in which the owner or operator of a motor fuel dispensing site can blend a non-compliant oxygenated gasoline into compliance.

RJ-7-711. Alcohol-oxygenated Gasoline Storage Tank Requirements

1. Authorization

This rule is authorized by A.R.S. § 3-3414(A)(4).

2. Objective

The objective of this rule is to protect the public by requiring that steps be taken to ensure that water is not in alcohol-oxygenated gasoline including what is required of an owner or operator when water is detected.

RJ-7-712. Water in Service Station Motor Fuel Storage Tanks

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(4) and 3-3433(A) and (B).

2. Objective

The objective of this rule is to specify the maximum amount of water that may be present in a motor fuel storage tank when oxygenated gasoline is not present.

4. Consistency with statutes and other rules

Both the heading of this Section and the rule text use the term "service station." However, the term defined in R20-2-701 is "motor fuel dispensing site." This is being updated in the proposed rulemaking currently underway.

RJ-7-713. Motor Fuel Storage Tank Labeling

1. Authorization

This rule is authorized by A.R.S. § 3-3414(A)(7).

2. Objective

The objective of this rule is to protect the public by requiring the owner or operator of a motor fuel dispensing site to label the content of motor fuel storage tank fill pipes and gasoline vapor return lines accurately. This requirement reduces the potential for putting the wrong fuel in a tank.

3. Consistency with statutes and other rules

HB 2171, signed by the Governor May 12, 2016, updated the term "E85" to "Ethanol Flex Fuel" under A.R.S. 3-3401. This is being updated in the proposed rulemaking currently underway.

RJ-7-714. Requirements for Motor Fuels Other than Arizona CBG

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(D), 3-3433(G) and 3-3495.

2. Objective

The objective of this rule is to provide specifications for motor fuel sold outside the CBG-covered area, set forth requirements for certifying the octane of

gasoline, and prohibit the sale of anything that is not motor fuel from a motor fuel storage tank.

RJ-7-715. Motor Fuel Quality Testing Methods and Requirements

1. Authorization

This rule is authorized by A.R.S. § 3-3414(D).

2. Objective

The objective of this rule is to specify quality testing methods and requirements for determining motor fuel properties and compliance.

RJ-7-716. Sampling and Access to Records

1. Authorization

This rule is authorized by A.R.S. § 3-3414(A)(4) and (14).

2. Objective

The objective of this rule is to specify the source from which the Division will obtain a sample of motor fuel for testing, the time that records regarding producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels must be maintained, and that the Division must be given access to those records.

RJ-7-717. Hold-open Latch Exception

1. Authorization

This rule is authorized by A.R.S. § 3-3436.

2. Objective

The objective of this rule is to require that if a nozzle is equipped with a hold-open latch, the hold-open latch must operate according to the manufacturer's specifications.

RJ-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels

1. Authorization

This rule is authorized by A.R.S. § 3-3433(L).

2. Objective

The objective of this rule is to specify registration, reporting, and quality assurance and quality control requirements for producers and suppliers of biofuels, including E85 and biodiesel and biodiesel blends.

3. Consistency with statutes and other rules

HB 2171, signed by the Governor May 12, 2016, replaced the definition "E85" with "Ethanol Flex Fuel" and updated the ASTM standards applicable to such fuel. This is being updated in the proposed rulemaking currently underway.

RJ-7-749. Definitions Applicable to Arizona CBG and AZRBOB

1. Authorization

This rule is authorized by **A.R.S.** § 3-3414(A)(4).

2. Objective

The objective of this rule is to make the rules clear and understandable by defining terms used in rule and statute regarding Arizona CBG and AZRBOB.

RJ-7-750. Registration Relating to Arizona CBG or AZRBOB

1. Authorization

This rule is authorized by A.R.S. §§ 3-3493 and 3-3494.

2. Objective

The objective of this rule is to specify who is required to register with the Division before producing, importing, or obtaining custody of Arizona CBG or AZRBOB, the information that must be supplied with a registration, and the consequence of failing to register.

RJ-7-751. Arizona CBG Requirements

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3414(D), 3-3433, 3-3491, and 3-3492.

2. Objective

   The objective of this rule is to specify general fuel property and performance requirements for Arizona CBG, including wintertime requirements, and fuel ethanol specifications. The rule also specifies elections and certifications to be made by a registered supplier and prohibited activities and consequences of failing to comply with standards.

RJ-7-752. General Requirements for Registered Suppliers

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3493 and 3-3494.

2. Objective

   The objective of this rule is to describe the process with which registered suppliers must certify each batch of Arizona CBG and AZRBOB, recordkeeping and records retention, quality assurance and quality control program process, and requirements for comparison of analytical data between in-house and independent laboratories.

RJ-7-753. General Requirements for Pipelines and Third-party Terminals

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. Objective

   The objective of this rule is to describe the responsibilities of a pipeline or third-party terminal when taking custody of Arizona CBG or AZRBOB from a registered supplier, notification protocol for receipt of non-compliant product, and QA/QC requirements.

RJ-7-754. Downstream Blending Exceptions for Transmix

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. Objective

The objective of this rule is to allow a pipeline or third-party terminal to use transmix by blending it into Arizona CBG or AZRBOB at a concentration not to exceed one-quarter of one percent by volume.

RJ-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0), 3-3433, 3-3491, and 3-3492.

2. Objective

The objective of this rule is to describe procedures for ensuring that AZRBOB is blended in a manner that complies with the standards for Arizona CBG. Additionally, the rule describes *QNQC* sampling and testing procedures that registered suppliers and oxygenate blenders are required to use and allows use of a third party to conduct the required sampling and testing.

RJ-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. Objective

The objective of this rule is to establish requirements for blending nonoxygenated blendstock with Arizona CBG.

RJ-7-757. Product Transfer Documentation; Records Retention

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. Objective

The objective of this rule is to describe the documentation required when title or custody of Arizona CBG or AZRBOB is transferred from one person to another and the time that documentation must be maintained.

RJ-7-759. Testing Methodologies

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. Objective

The objective of this rule is to specify the analytical methods that a registered supplier or importer must use when certifying that Arizona CBG or AZRBOB meet therequired fuel standards.

Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG andAZRBOB

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. Objective

The objective of this rule is to set forth in table form the Division-approved test methods for various fuel parameters of Arizona CBG or AZRBOB. The Division has approved as equivalent methods approved by the EPA and CARB.

RJ-7-760. Compliance Surveys

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. Objective

The objective of this rule is to establish procedures that a registered supplier is required to use when conducting and reporting results of VOC and NOx compliance surveys for Arizona CBG or AZRBOB if the registered supplier has elected to average fuel properties.

R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

1. Authorization

This rule is authorized by A.RS.§§ 3-3414(D) and 3-3433.

2. Objective

The objective of this rule is to identify the persons liable when Arizona CBG or AZRBOB is found not to comply with the specified fuel standards and the defenses available to a person that would otherwise be liable for non-compliant Arizona CBG or AZRBOB.

R3-7-762. Penalties

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0), 3-3433, 3-3475, and 3-3476.

2. Objective

The objective of this rule is to prescribe the penalty for violating a rule regarding fuel standards.

Table 1. Type 1 Arizona CBG Standards

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(0) and 3-3433.

2. Objective

The objective of this rule is to establish standards regarding VOC and NOx emissions and oxygen content of Type 1 Arizona CBG and allow for alternative compliance options.

Table 2. Type 2 Arizona CBG Standards

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(D) and 3-3433.

2. Objective

The objective of this rule is to establish standards for various fuel properties of Type 2 Arizona CBG and allow for alternative compliance options.

ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

RJ-7-901. Material Incorporated by Reference

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3414(A)(4), 3-3514 and 3-3515.

2. Objective

   The objective of this rule is to incorporate by reference materials dealing with gasoline vapor control testing procedures.

RJ-7-902. Exemptions

1. Authorization

   This rule is authorized by A.R.S. § 3-3514 and 3-3515.

2. Objective

   The objective of this rule is to establish criteria and procedures for obtaining an exemption from the requirements regarding gasoline vapor control.

RJ-7-903. Equipment and Installation

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.

2. Objective

   The objective of this rule is to establish standards for vapor recovery systems and components and for installation of the systems and components. The rule allows the Division to reject a vapor recovery system or component based on a specified set of criteria.

RJ-7-904. Application Requirements and Process for Authority to Construct Plan Approval

1. Authorization

   This rule is authorized by A.R.S. §§ 3-3514 and 3-3515(0).

2. Objective

The objective of this rule is to establish procedures for submitting and obtaining approval of an authority to construct plan application before constructing a site requiring a vapor recovery system or making a major modification to an existing system. The rule also requires that the Division be allowed to conduct a pre-burial inspection and allows a person with an approved authority to construct plan to dispense gasoline for 90 days before final approval if a required inspection is scheduled.

R3-7-905. Initial Inspection and Testing

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3514, and 3-3515.

2. Objective

The objective of this rule is to prescribe the time and procedure for initially inspecting and testing a new or modified gasoline dispensing site, including the tests required to be performed during an initial test. The rule also establishes the consequences for failing a required test.

R3-7-906. Fees

1. Authorization

This rule is authorized by A.R.S. §§ 3-3452, 3-3514(2), and 3-3515(F).

2. Objective

The objective of this rule is to establish fees for reviewing and approving an authority to construct plan and conducting pre-burial re-inspection.

R3-7-907. Operation

1. Authorization

This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.

2. Objective

The objective of this rule is to establish standards for installing, maintaining, and operating a stage II vapor recovery system, require daily inspection of the system, and define conditions under which the system must be shut down

R3-7-908. Training and Public Education

1. Authorization

This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.

2. Objective

The objective of this rule is to require that all persons operating a gasoline dispensing site using a stage II vapor recovery system have training and that documentation of the training be maintained. The rule also requires that information regarding how to report equipment problems be posted on each gasoline dispenser.

R3-7-909. Recordkeeping and Reporting

1. Authorization

This rule is authorized by A.R.S. §§ 3-3514 and 3-3515.

2. Objective

The objective of this rule is to establish recordkeeping requirements regarding daily inspection of and maintenance to a stage II vapor recovery system. The rule also specifies that the owner or operator of a gasoline dispensing site exempt from stage II requirements maintain a log showing monthly throughputs.

R3-7-910. Annual Inspection and Testing

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3514 and 3-3515.

2. Objective

The objective of this rule is to establish procedures for scheduling and conducting an annual inspection of a vapor recovery system, including the responsibilities of the RSR regarding scheduling. The rule clarifies that if there is a discrepancy between the test results of the RSR and Division, the Division results control.

RJ-7-911. Compliance Inspections

1. Authorization

This rule is authorized by A.R.S. § 3-3514.

2. Objective

The objective of this rule is to inform owners and operators that the Division conducts unannounced inspections of vapor recovery systems.

RJ-7-912. Enforcement

1. Authorization

This rule is authorized by A.R.S. §§ 3-3475, 3-3514, and 3-3515.

2. Objective

The objective of this rule is to establish the consequences of the Division determining that a vapor recovery system is defective or non-compliant.

RJ-7-913. Stage II Decommissioning

1. Authorization

This rule is authorized by A.R.S. §§ 3-3515(H) and (I).

2. Objective

The objective of this rule is to provide the requirements for mandatory decommissioning of stage II vapor recovery equipment, including notification, equipment removal, and testing requirements.

ARTICLE 10. STAGE I VAPOR RECOVERY SYSTEMS

RJ-7-1001. Materials Incorporated by Reference

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(4), 3-3512(E) and 3-3514.

2. Objective

The objective of this rule is to incorporate by reference materials dealing with stage I gasoline vapor control testing procedures.

R3-7-1002. Exemptions

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective

The objective of this rule is to establish criteria and procedures for obtaining an exemption from the requirements regarding stage I gasoline vapor control.

RJ-7-1003. Equipment and Installation

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective

The objective of this rule is to establish standards for vapor recovery systems and components and for installation of the systems and components. The rule allows the Department to reject a vapor recovery system or component based on a specified set of criteria.

RJ-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512(D) and 3-3514.

2. Objective

The objective of this rule is to establish procedures for submitting and obtaining approval of an authority to construct plan application before constructing a site requiring a stage I vapor recovery system or making a major modification to an existing system. The rule also sets minimum standards for stage I vapor recovery systems and requires that the Department be allowed to conduct a pre-burial inspection. A person with an approved authority to construct plan to dispense gasoline for 90 days before final approval if a required inspection is scheduled.

R3-7-1005. Initial Inspection and Testing

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3512 and 3-3514.

2. Objective

The objective of this rule is to prescribe the time and procedure for initially inspecting and testing a new or modified gasoline dispensing site, including the tests required to be performed during an initial test. The rule also establishes the consequences for failing a required test.

R3-7-1006. Fee

1. Authorization

This rule is authorized by A.R.S. §§ 3-3452, 3-3512(E) and 3-3514(2).

2. Objective

The objective of this rule is to establish fees for reviewing and approving an authority to construct plan.

R3-7-1007. Operation

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective

The objective of this rule is to establish standards for installing, maintaining, and operating a stage I vapor recovery system, require daily inspection of the system, and define conditions under which the system must be shut down

RJ-7-1008. Training and Public Education

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective

The objective of this rule is to require that all persons operating a gasoline dispensing site using a stage I vapor recovery system have training and that documentation of the training be maintained. The rule also requires that information regarding how to report equipment problems be posted on each gasoline dispenser.

RJ-7-1009. Recordkeeping and Reporting

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective

The objective of this rule is to establish recordkeeping requirements regarding daily inspection of and maintenance for a stage I vapor recovery system. The rule also specifies that the owner or operator of a gasoline dispensing site exempt from stage I requirements maintain a log showing monthly throughputs.

RJ-7-1010. Annual Testing and Inspection

1. Authorization

This rule is authorized by A.R.S. §§ 3-3414(A)(15), 3-3512 and 3-3514.

2. Objective

The objective of this rule is to establish procedures for scheduling and conducting an annual inspection of a vapor recovery system, including the responsibilities of the RSR regarding scheduling. The rule clarifies that if there is a discrepancy between the test results of the RSR and Division, the Division results control.

RJ-7-1011. Compliance Inspections and Additional Test Methods

1. Authorization

This rule is authorized by A.R.S. §§ 3-3514.

2. Objective

The objective of this rule is to inform owners and operators that the Division conducts unannounced inspections of stage I vapor recovery systems.

RJ-7-1012. Enforcement

1. Authorization

This rule is authorized by A.R.S. §§ 3-3475, 3-3512 and 3-3514.

2. Objective

The objective of this rule is to establish the consequences of the Division determining that a stage I vapor recovery system is defective or non-compliant.

R3-7-1013. Stage II Vapor Recovery

1. Authorization

This rule is authorized by A.R.S. §§ 3-3515(H).

2. Objective

Provide requirements for removal of stage II vapor recovery equipment at stations that are identified as having stage II equipment after the deadline for removal of September 30, 2018.

Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

1. Authorization

This rule is authorized by A.R.S. §§ 3-3512 and 3-3514.

2. Objective

The objective of this rule is to provide the testing criteria to be used for determining compliance when performing CARB TP-201.3 tests.

Appendix A

Draft Rule Revision

This draft is current as of February 16, 2017, and is subject to minor amendments until the proposed rule is filed with the Secretary of State.

DOUGLAS A. DUCEY
Governor

Mark W. Killian
Director

Arizona Department of Agriculture

1688 W. Adams Street, Phoenix, Arizona 85007
(602) 542-0997 FAX (602) 542-5420

January 25, 2017

The Honorable Douglas A. Ducey
c/o Hunter Moore
Natural Resources Policy Advisor
Governor of Arizona
1700 West Washington
Phoenix, Arizona 85007

RE: Request for Approval of Rule Making
Title 3 Chapter 7, Weights and Measures Services Division

Dear Hunter,

On June 9, 2016 the Arizona Department of Agriculture received written Rule Making Authorization to proceed with exempt rulemakings to amend the Weights and Measures Division ("WMD") rules in Title 3, Chapter 7 (previously Title 20, Chapter 2.) This approval was for exempt rulemaking which was initially intended to deal with the administrative changes to the rules due to the incorporation of the WMD into the Department of Agriculture. However, in preparing for this rulemaking, WMD has been working with stakeholders and have identified several rules that should be amended and improved in an effort to reduce regulatory burden and eliminate or update portions of rules that are antiquated or outdated. As a result, the Arizona Department of Agriculture, Weights and Measures Services Division is requesting to amend the June 9, 2016 Rule Making Authorization to allow the Division to make substantive changes that will update and improve the Division's administrative rules.

The following bullet points summarize the proposed rulemaking and are a product of multiple meetings with applicable stakeholder and members of the regulated industry.

- Update the current rules to correct citations and other requirements based on the transfer of the Department of Weights and Measures to the Department of Agriculture.
- Update handbooks that outline testing and device requirements from 2009 and 2010 versions to current versions.
- Modify enforcement procedures to eliminate mandatory fine amounts and give the Division discretion to issue lower fine amounts.
- Require licensed service technicians to report finding consumer credit card skimming devices at retail fuel pumps.
- Reduce stringent requirements for grandfathering commercial devices that have been used within Arizona since 1975.
- Implement provisions of House Bill 2171 related to price posting behind sales counters and fuel quality provisions.

- Streamline weighmaster licensing and weight ticket issuance to allow for electronic signatures and stamps, in addition to removal of exam requirements for deputy weighmasters.
- Update licensee exam requirements for registered service representatives and public weighmasters to better align with other divisions of the Department of Agriculture. Allow for optional 3rd party test administration at the discretion of the Department to better service the regulated community. The cost of 3rd party testing would be paid by the person wishing to utilize such services.
- Update and streamline fuel-related rules for consumer postings, fuel quality requirements, dispenser equipment requirements, and biofuel requirements.
- Removal of a deadline for submittal of alternate vapor recovery decommissioning plans to allow greater flexibility for gas station owners to change the timeframe for which they would like to remove stage II vapor recovery equipment.

These proposed rule changes are intended to help achieve the Governor's objective of reducing and improving the existing administrative rules. This rulemaking is therefore justifiable under EO2017-02(2)(b) ("[t]o reduce or ameliorate a regulatory burden while achieving the same regulatory objective") and EO2016-03(2)(f) ("[t]o comply with a state statutory requirement").

I have included with this request a copy of the June 2, 2016 Request for Approval of Rule Making, the June 9, 2016 Rule Making Authorization, and a draft of Weights and Measures rules showing changes anticipated at this stage. The Department plans to continue to work internally, with industry, and the Department Advisory Council to finalize the rulemaking.

If you have any questions feel free to contact me at (602) 542-5729. Thank you for your consideration of this request.

Sincerely,

Mark Killian
Director
MK; cm

TITLE 3. ARIZONA DEPARTMENT OF AGRICULTURE
CHAPTER 7. DEPARTMENT OF AGRICULTURE
WEIGHT AND MEASURES SERVICES DIVISION
ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section
R3-7-101. Definitions
R3-7-102. Metrology Laboratory Testing and Calibration Fees
R3-7-103. Licensing and Fees
R3-7-104. Administrative Enforcement Action
R3-7-105. Repealed
R3-7-106. Repealed
R3-7-107. Repealed
R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct
R3-7-109. Administrative Hearing Procedures
R3-7-110. Motion for Rehearing or Review
R3-7-111. Repealed
R3-7-112. Repealed
R3-7-113. Renumbered
R3-7-114. Repealed
R3-7-115. Renumbered
R3-7-116. Renumbered
R3-7-117. Renumbered
Table 1. Time-frames (in days)

ARTICLE 2. COMMERCIAL DEVICES

Section
R3-7-201. Licensing Process
R3-7-202. Repealed
R3-7-203. Approval, Installation, and Sale of Devices
R3-7-204. Livestock and Vehicle Scale Installation

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

Section
R3-7-301. Repealed
R3-7-302. Handbook 130 and Handbook 133
R3-7-303. Repealed
R3-7-304. Repealed
R3-7-305. Repealed
R3-7-306. Repealed
R3-7-307. Repealed
R3-7-308. Repealed
R3-7-309. Repealed
R3-7-310. Repealed
R3-7-311. Repealed
R3-7-312. Repealed
R3-7-313. Repealed

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

Section
R3-7-401. Repealed
R3-7-402. Price-posting Inspection Procedure and Violation Exceptions
R3-7-403. Repealed
R3-7-404. Repealed
R3-7-405. Repealed
R3-7-406. Repealed
R3-7-407. Repealed
R3-7-408. Repealed
R3-7-409. Repealed
R3-7-410. Repealed
R3-7-411. Repealed
R3-7-412. Repealed

~~Department of~~ Weights and Measures Services Division

ARTICLE 5. PUBLIC WEIGHMASTERS

Section
R3-7-501. Qualifications; License and Renewal Application Process
R3-7-502. Duties
R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action
R3-7-504. Scales and Vehicle Weighing
R3-7-505. Weight Certificates
R3-7-506. Seal of Authority
R3-7-507. Prohibited Acts

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

Section
R3-7-601. Qualifications; License and Renewal Application Process
R3-7-602. Duties
R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action, and Certification of Standards and Testing Equipment
R3-7-604. Prohibited Acts

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R3-7-701. Definitions
R3-7-702. Material Incorporated by Reference
R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
R3-7-704. Price and Grade Posting on External Signs
R3-7-705. ~~Price, Octane, and Lead Substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling
R3-7-706. ~~Unattended Retail Dispensers~~ Repealed
R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends
R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed
R3-7-710. Blending Requirements
R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-alcohol Blend Storage Tank Requirements
R3-7-712. Water in ~~Service Station~~ Motor Fuel Dispensing Site Storage Tanks
R3-7-713. Motor Fuel Storage Tank Labeling
R3-7-714. Requirements for Motor Fuels Other than Arizona CBG
R3-7-715. Motor Fuel Quality Testing Methods and Requirements
R3-7-716. Sampling and Access to Records
R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Equipment
R3-7-718. Requirements for the Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends
R3-7-719. Repealed
R3-7-720. Renumbered
R3-7-721. Renumbered
R3-7-722. Reserved
through
R3-7-748. Reserved
R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB
R3-7-750. Registration Relating to Arizona CBG or AZRBOB
R3-7-751. Arizona CBG Requirements
R3-7-751.01. Repealed
R3-7-752. General Requirements for Registered Suppliers
R3-7-753. General Requirements for Pipelines and Third-party Terminals
R3-7-754. Downstream Blending Exceptions for Transmix
R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R3-7-757. Product Transfer Documentation; Records Retention
R3-7-758. Repealed
R3-7-759. Testing Methodologies
Table A. Arizona ~~Department of~~ Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB
R3-7-760. Compliance Surveys
R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB
R3-7-762. Penalties
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards
Table 3. Repealed

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ARTICLE 8. REPEALED

ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

Section
R3-7-901. Material Incorporated by Reference
R3-7-902. Exemptions
R3-7-903. Equipment and Installation
R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-905. Initial Inspection and Testing
R3-7-906. Fee
R3-7-907. Operation
R3-7-908. Training and Public Education
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R3-7-910. Annual Inspection and Testing
R3-7-911. Compliance Inspections
R3-7-912. Enforcement

ARTICLE 10. STAGE I VAPOR RECOVERY SYSTEMS

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R3-7-1001. Material Incorporated by Reference
R3-7-1002. Exemptions
R3-7-1003. Equipment and Installation
R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-1005. Initial Inspection and Testing
R3-7-1006. Fee
R3-7-1007. Operation
R3-7-1008. Training and Public Education
R3-7-1009. Recordkeeping and Reporting
R3-7-1010. Annual Inspection and Testing
R3-7-1011. Compliance Inspection
R3-7-1012. Enforcement
R3-7-1013. Stage II Vapor Recovery
Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

The definitions in A.R.S. §§ ~~41-2051~~ 3-3401, ~~41-2065~~ 3-3414, ~~41-2085~~ 3-3436, ~~41-2121~~, and ~~41-2131~~ 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the ~~Department~~ Division issues for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the ~~Department~~ Division that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the ~~Department~~ Division that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   d. Stop performing weighmaster, deputy weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the ~~Department~~ Division that the person is complying with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   e. ~~Maintain~~ Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   g. Excavate a vapor recovery site according to R3-7-104(L);or
   h. Comply with scheduling a test according to R3-7-104(L).~~; or~~
   ~~i. Retake a competency examination under A.R.S. § 41-2094.~~
3. "Application" means, for purposes of R3-7-108, forms ~~designated as applications~~ and all documents and additional information the ~~Department~~ Division requires an applicant to submit ~~with an application~~ when applying for a license.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.
6. "Area B" has the same meaning as in A.R.S. § 49-541.

~~Department of~~ Weights and Measures Services Division

7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
    a. At a location where there was not one previously;
    b. To replace all gasoline storage tanks; or
    c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States ~~Department~~ Division of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2010~~ 2016 edition), incorporated by reference and on file with the ~~Department~~ Division. This incorporation by reference contains no future editions or amendments.
15. ~~"Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.~~
16. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2009~~ 2016 edition), incorporated by reference and on file with the ~~Department~~ Division. This incorporation by reference contains no future editions or amendments.
17. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January ~~2005~~ 2016 edition), incorporated by reference and on file with the ~~Department~~ Division. This incorporation by reference contains no future editions and amendments.
18. ~~"NCWM" means the National Conference on Weights and Measures.~~

~~19.~~18. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.

~~20.~~19. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.

~~21.~~20. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.

~~22.~~21. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.

22. "NCWM" means the National Conference on Weights and Measures.
23. "NIST" means the National Institute of Standards and Technology.
24. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
25. "Out-of-service tag" means a red rejection tag that signifies ~~that~~ a commercial device does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook ~~44~~, or this Chapter.
26. "Person" as defined in A.R.S. § ~~41-2051~~ 41-3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
27. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and may be used, unless the ~~Department~~ Division orders otherwise.
28. "Placed-in-service report" means the form that a registered service representative completes and submits to the ~~Department~~ Division after placing a commercial device in service.
29. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.
30. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
31. "Seal of authority" means a stamp or press of the ~~Department~~ Division's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
32. "Service Counter" means a display staffed by a sales associate and requires a customer to receive assistance in order to purchase a product.

~~32.~~33. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the ~~Department~~ Division.

~~33.~~34. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.

~~34.~~ 35. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.

~~35.~~ 36. "Underground storage tank" means a tank as described in A.R.S. § 49-1001~~(18)~~.

~~36.~~ 37. "Unit" means a quantity adopted as a standard of measurement.

~~37.~~ 38. "Vapor recovery registered service representative ~~No. 1~~" means an individual to whom the ~~Department~~ Division has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 or this Chapter including annual vapor-recovery tests.

~~38. "Vapor recovery registered service representative No. 2" means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.~~

39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, CARB Executive Orders, or this Chapter.

40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the ~~Department~~ Division, ~~that~~ which certifies the accuracy of the weight of the commodity measured.

R3-7-102. Metrology Laboratory Testing and Calibration Fees

A. For all services of the ~~Department~~ Division's Metrology Laboratory, the ~~Department~~ Division shall charge $110 per hour with a minimum charge of $50.

B. In addition to the fee in subsection (A), the ~~Department~~ Division shall charge for travel and per diem at the rates established under A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

R3-7-103. Licensing and Fees

A. A license is effective on the first day of the month following the date that the license application is filed with the ~~Department~~ Division. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if not received or postmarked on or before ~~the Department does not receive the payment by~~ the due date. The ~~Department~~ Division shall not process a license or renewal application for which payment is delinquent.

~~**C.** The Department shall prorate a license renewal fee if the licensee's first renewal is fewer than 12 months from the date that license is issued.~~

~~**D.** The Department shall issue a full refund to a licensee for a license renewal fee only if the licensee provides written notice to the Department before the renewal fee due date that the renewal is not needed.~~

C. If the Division receives payment for a license that excludes the payment of applicable late fees or past due civil penalties, the Division shall apply the license fee payment to the licensee's account and issue a separate invoice for the additional monies owed to the Division. The license will not be issued by the Division until all fees due are paid.

R3-7-104. Administrative Enforcement Action

A. The ~~Department~~ Division shall take progressive enforcement action for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The ~~Department~~ Division shall ~~provide~~ make available a copy of its inspection report to the person who owns or operates a location that the ~~Department~~ Division inspects. The report shall include the inspection results~~,~~ and violations~~, and enforcement action~~. The Division shall send a copy of the inspection report to the owner of a location by electronic mail if the owner has provided an electronic mail address to the Division. Inspection results and violations shall be posted on the Division website.

C. The person who owns or operates a location inspected by the ~~Department~~ Division may request a hearing under R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The ~~Department~~ Division shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § ~~41-2115(B)~~ 3-3475(C).

F. Commercial device.

1. The ~~Department~~ Division ~~shall~~ may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.
2. The ~~Department~~ Division ~~shall~~ may confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without ~~Department~~ Division authority.
3. The Division may condemn and confiscate a weight, measure, or other commercial device that the Division determines is incorrect and not capable of compliance with Handbook 44.
~~3.~~ 4. The ~~Department~~ Division shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in ~~Handbook 44~~ A.R.S. Title 3 Chapter 19, Handbook 44 or this Chapter and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.
   a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.
   b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.
~~4.~~ 5. The ~~Department~~ Division shall issue a warning tag when a commercial device is not in compliance with the requirements in ~~Handbook 44~~ A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the ~~public~~ consumer. The ~~Department~~ Division shall issue an out-of-service tag if the commercial device is not repaired by the

deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.

~~5.~~ 6. The ~~Department~~ Division shall issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.

~~6.~~ 7. The ~~Department~~ Division shall issue an out-of-service tag if a ~~Department~~ Division inspector cannot conduct an inspection of a commercial device because of malfunction, abnormal performance, or a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.

~~7.~~ 8. The ~~Department~~ Division shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.

~~8.~~ 9. The ~~Department~~ Division shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The ~~Department~~ Division shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.

~~9.~~ 10. The ~~Department~~ Division shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The ~~Department~~ Division shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.

~~10.~~ 11. In addition to any enforcement action under subsections (F)(1) through ~~(9)~~ (10):

a. If the ~~Department~~ Division finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:

i. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the person who owns or operates the commercial device; and

ii. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.

b. If the ~~Department~~ Division finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:

i. The ~~Department~~ Division ~~shall~~ may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to $300 ~~civil penalty~~; and

ii. The ~~Department~~ Division ~~shall~~ may issue an administrative order to the person and impose a civil penalty up to $500 ~~civil penalty~~ at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy weighmaster.

1. The ~~Department~~ Division ~~shall~~ may issue an administrative order if a public weighmaster's:
   a. Weigh tickets are not in numbered sequence or are missing,
   b. If used, the seal ~~Seal~~ or press is not readable, or
   c. Records are not maintained according to R3-7-505.
2. The ~~Department~~ Division ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster if:
   a. The public weighmaster's weigh tickets contain inaccurate information,
   b. The public weighmaster violates an administrative order, or
   c. The public weighmaster misuses a seal or press or has an unauthorized seal or press.
3. The ~~Department~~ Division shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
4. The ~~Department~~ Division shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
5. The ~~Department~~ Division shall issue an administrative order and a civil penalty up to $300 to a person who performs public weighmaster duties without a license.
6. If a public ~~Weighmaster~~ weighmaster permits an unlicensed person to perform deputy ~~Weighmaster~~ weighmaster duties, the ~~Department~~ Division ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties;
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties; and
   c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy weighmaster duties more than twice.

H. ~~Package~~ Packaging.

1. The ~~Department~~ Division shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
   a. Returning the package to the packer or manufacturer,
   b. Labeling the package to reflect its correct quantity,
   c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
   d. Repackaging the commodity so the package contains the quantity represented.

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2. In addition to an administrative order, the ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.

1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The ~~Department~~ Division shall issue a stop-sale, stop-use tag to a person who fails a price verification ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the ~~Department~~ Division completing the ~~reinspection~~ inspection.
   a. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ per violation on a person who fails a re-inspection if the ~~Department~~ Division finds more than one item at more than its posted price.
   b. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $200 ~~civil penalty~~ per violation on a person who fails a second reinspection. The ~~Department~~ Division shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.
3. If the ~~Department~~ Division receives and substantiates a complaint about a person against whom the ~~Department~~ Division took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the ~~Department~~ Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the ~~Department~~ Division previously imposed against this person.
4. The ~~Department~~ Division ~~shall~~ may issue a warning tag to a person who does not have a written price-error policy. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the person does not have a written price-error policy upon reinspection.
5. The ~~Department~~ Division shall issue a warning tag to a person who does not have a price display visible to the ~~public~~ consumer at a check-out location. The ~~Department~~ Division shall issue an out-of-service tag if the person does not have a price display visible to the ~~public~~ consumer at a check-out location upon reinspection.

J. Price posting.

1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The ~~Department~~ Division shall issue a stop-sale, stop-use tag to a person who fails a price posting ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the ~~Department~~ Division completing the ~~reinspection~~ inspection.
3. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $50 ~~civil penalty~~ for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
4. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ for each inspected lot not priced if a person fails a second reinspection.
5. If the ~~Department~~ Division receives and substantiates a complaint about a person against whom the ~~Department~~ Division took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the ~~Department~~ Division shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the ~~Department~~ Division previously imposed against this person.

K. Fuel quality and labeling.

1. The ~~Department~~ Division shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The ~~Department~~ Division shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
2. The ~~Department~~ Division ~~shall~~ may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The ~~Department~~ Division ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 per octane level ~~civil penalty~~ or fuel grade to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
   a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
   b. Selling the motor fuel at the correct octane level,
   c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
   d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or
   e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.
4. The ~~Department~~ Division ~~shall~~ may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the ~~Department~~ Division's request. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a person who provides the requested documentation between 24 and 72 hours. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.

1. The ~~Department~~ Division ~~shall~~ may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to $500 ~~civil penalty~~ on a person who:
   a. Begins construction or makes a major modification without an authority to construct plan approval,
   b. Does not comply with the authority to construct plan approval, or
   c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      i. The vapor recovery system and its components comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter; and

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ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.

2. The ~~Department~~ Division ~~shall~~ may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a ~~Department~~ Division pre-burial inspection and ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the excavated system does not pass required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.
3. The ~~Department~~ Division shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The ~~Department~~ Division shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
4. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.
5. The ~~Department~~ Division ~~shall~~ may issue a warning tag to a person whose vapor recovery system labeling does not comply with ~~the authority to construct plan approval~~ R3-7-713. The ~~Department~~ Division ~~shall~~ may issue a stop-sale, stop-use tag and impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not correct a labeling violation within the time specified on a warning tag.
6. The ~~Department~~ Division shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R3-7-905 or R3-7-910. If the test failure is isolated to a system component, the ~~Department~~ Division's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.

~~7.~~ M.The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

~~M.~~ N.Registered service agency and registered service representative.

1. If a registered service agency submits to the ~~Department~~ Division an inaccurate or incomplete placed-in-service or test report, the ~~Department~~ Division ~~shall:~~ may
   ~~a. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service report, the Department shall:~~
   ~~b. Impose~~ impose a civil penalty up to $50 ~~civil penalty~~ on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the ~~Department~~ Division ~~shall~~ may:
   a. Issue an administrative order,
   b. Impose a civil penalty up to $500 ~~civil penalty~~ and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The ~~Department~~ Division ~~shall~~ may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for which the unlicensed individual works.
5. The ~~Department~~ Division ~~shall~~ may issue an administrative order if a registered service representative places a commercial device into service without ~~Department~~ Division authorization. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency whose representative places a commercial device into service without ~~Department~~ Division authorization.
6. The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a registered service agency whose registered service representative uses a metrology standard or vapor recovery ~~air to liquid (A/L) ratio~~ testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The ~~Department~~ Division ~~shall~~ may confiscate a metrology standard or ~~A/L ratio~~ vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The ~~Department~~ Division shall return the standard or equipment when it is properly certified.
7. The ~~Department~~ Division shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter:
   a. Notify the ~~Department~~ Division of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.

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8. The Division may impose a civil penalty up to $300 on a vapor RSA that violates (M)(7)(a), (b), (d), or (e). The ~~Department~~ Division ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a vapor recovery registered service agency that violates subsection (M)(7)(c) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the ~~Department~~ Division ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for the first violation, and
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency for each subsequent violation by the registered service representative.
10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the registered service representative shall:
   a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R3-7-910;
   b. Notify the ~~Department~~ Division of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
   c. Notify the ~~Department~~ Division of the time of the test required by R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the ~~Department~~ Division ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service representative;
   b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
   c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).
12. If a registered service representative fails to notify the Division of a non-compliant commercial device under R3-7-602(B)(1)(f), the Division may impose a civil penalty up to $300.

R3-7-105. Repealed

R3-7-106. Repealed

R3-7-107. Repealed

R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct

A. For each type of license, renewal, or authority issued by the ~~Department~~ Division, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.

B. For each type of license, renewal, or authority issued by the ~~Department~~ Division, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the ~~Department~~ Division receives an application.
1. If the application is not administratively complete, the ~~Department~~ Division shall send a deficiency notice to the applicant.
   a. The deficiency notice shall state each deficiency and the information needed to complete the application.
   b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the ~~Department~~ Division the missing information specified in the deficiency notice. The time-frame for the ~~Department~~ Division to finish the administrative completeness review is suspended from the date the ~~Department~~ Division mails or emails the deficiency notice to the applicant until the date the ~~Department~~ Division receives the missing information.
   c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the ~~Department~~ Division shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
2. If the application is administratively complete, the ~~Department~~ Division shall send a written notice of administrative completeness to the applicant. The application is automatically deemed complete 10 days following submittal if the agency fails to send a written notice of administrative completeness or deficiency notice outlined in subsection (B)(1).

C. For each type of license, renewal, or authority issued by the ~~Department~~ Division, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the ~~Department~~ Division sends written notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the ~~Department~~ Division may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the ~~Department~~ Division to finish the substantive review is suspended from the date the ~~Department~~ Division mails or emails the request until the ~~Department~~ Division receives the information.
2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the ~~Department~~ Division shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the ~~Department~~ Division deny the application within 15 days of the date of the notice of withdrawal. An applicant who desires to reapply shall begin the application process anew.
3. The ~~Department~~ Division shall issue a written notice of denial of license, renewal, or authority if the ~~Department~~ Division determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:
   a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and

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b. The name and telephone number of a ~~Department~~ Division employee who can answer questions regarding the application process.

4. If the applicant meets all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority the ~~Department~~ Division shall issue the license, renewal, or authority to the applicant.

D. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

E. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

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

R3-7-109. Administrative Hearing Procedures

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the ~~Department~~ Division's hearings.

R3-7-110. Motion for Rehearing or Review

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the ~~Department~~ Division who is aggrieved by a decision rendered in the case may file with the ~~Department~~ Division, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the ~~Department~~ Division. A response may be filed within 15 days after service of the motion or amended motion by any other party. The ~~Department~~ Division may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:

1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the ~~Department~~ Division.
2. Misconduct of the ~~Department~~ Division, the administrative law judge, or the prevailing party.
3. Accident or surprise that could not have been prevented by ordinary prudence.
4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
7. That the decision is not justified by the evidence or is contrary to law.

D. The ~~Department~~ Division may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the ~~Department~~ Division may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.

E. The ~~Department~~ Division, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.

F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The ~~Department~~ Division may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the ~~Department~~ Division permits reply affidavits, the replying party has five days in which to serve them.

G. If the ~~Department~~ Division makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the ~~Department~~ Division may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the ~~Department~~ Division's final decision.

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R3-7-111. Repealed

R3-7-112. Repealed

R3-7-113. Renumbered

R3-7-114. Repealed

R3-7-115. Renumbered

R3-7-116. Renumbered

R3-7-117. Renumbered

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

Type of License	Authority	Administrative Completeness Review ~~Time-frame~~	~~Time to Respond to Deficiency Notice~~ Response to Completion Request	Substantive Completeness Review ~~Time-frame~~	~~Time to Respond to Request for~~ Response to Additional Information	Overall Time-frame
Commercial Device ~~R3-7-201~~	R3-7-201	~~10~~ 14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44
Public Weighmaster ~~R3-7-501~~	R3-7-501	~~10~~ 14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44
Registered Service Agency/Representative ~~R3-7-601~~	R3-7-601	~~10~~ 14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44
Authority to Construct ~~R3-7-904~~	R3-7-904	~~10~~14	~~20~~ 28	30	~~20~~ 30	~~40~~ 44

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201. Licensing Process

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the ~~Department~~ Division. The application shall be on a form supplied by the ~~Department~~ Division that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device; ~~and~~
4. The applicant's signature~~.~~ ; and
5. An electronic mail address for the owner or operator for the Division to provide licenses, invoices, inspections and reports, enforcement action, and other notifications.

R3-7-202. Repealed

R3-7-203. Approval, Installation, and Sale of Devices

A. A commercial device installed or placed in use after January 1, 1975, shall ~~be prototype approved by~~ have an NCWM National Type Evaluation Program (NTEP) Certificate of Conformance or have a certificate of approval from the California Type Evaluation Program. NTEP Certificate of Conformance issuance may be verified at the NCWM website: http://www.ncwm.net/ntep/cert_search.

1. If a commercial device has been continuously licensed, or evidence shows it has been in use by the owner in Arizona since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.
2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a ~~Department~~ Division inspection, the ~~Department~~ Division shall issue an out of service tag or confiscate the device per R3-7-104(F)(3) and revoke the commercial device license. ~~and a~~ A person shall ~~not~~ no longer use the device commercially.

B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

~~Department of~~ Weights and Measures Services Division

R3-7-204. Livestock and Vehicle Scale Installation

A. Portable livestock and portable vehicle scales shall be designed to be moveable from one location to another.

B. Portable scales and low-profile electronic scales shall be accessible for maintenance.

C. Notwithstanding Handbook 44, vehicle and livestock scales installed above ground shall have 2 feet minimum clearance from the bottom of the lowest platform support girder to the ground.

D. Notwithstanding Handbook 44, vehicle and livestock scales, installed with a pit, shall have 2 feet minimum clearance from the bottom of the main girder that is lowest in platform support to the pit floor.

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

R3-7-301. Repealed

R3-7-302. Handbook 130 and Handbook 133

A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.

B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:

1. Clearly labels the price-per-pound where the packaged produce is displayed, and
2. Deducts a tare for the packaging from the gross weight at the time of sale.

C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.

D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

E. A person who owns or operates a plant nursery shall label each commodity with its identity, ~~container size,~~ and price, or post a sign with this information adjacent to the point of display.

F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

G. Items in or behind a service counter that can be sold only with the assistance of a sales associate are not required to have a price displayed. If a price is displayed, it must meet the requirements of this Chapter.

R3-7-303. Repealed

R3-7-304. Repealed

R3-7-305. Repealed

R3-7-306. Repealed

R3-7-307. Repealed

R3-7-308. Repealed

R3-7-309. Repealed

R3-7-310. Repealed

R3-7-311. Repealed

R3-7-312. Repealed

R3-7-313. Repealed

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

R3-7-401. Repealed

R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

A. The ~~Department~~ Division shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the ~~Department~~ Division finds an alleged price-posting violation involving an item used during its price-verification inspection, the ~~Department~~ Division shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:

1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12);~~, or~~
2. Less than 98 percent of the prices of inspected items are posted accurately; or~~.~~
3. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter.

D. The following are not price-posting violations:

1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
2. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space or at the farthest left and farthest right side of the shelf or hooks with the same priced items. For items of the same price, the uniform price codes may differ for the commodities with prices labeled in this manner, as long as the price posted is a generic price and does not refer to a specific product; ~~The price for commodities with the same uniform price code may be more than three feet from the price posted if they are all displayed in the same location;~~
3. ~~A price posted above the highest item in a vertical location is the price of all items in that location~~ A price is posted on a vertical display in a location clearly visible to the consumer for items of the same price;
4. Self-contained refrigerated coolers may have prices posted on the inside or outside of the refrigerator doors located on the left, right, or center of the shelving units in a location clearly visible to the consumer.

~~4.~~5. A storage area that is posted as a storage area for which a customer should ask for assistance;

~~5.~~6. A restocking area that is posted as a restocking area for which a customer should ask for assistance;

~~6.~~7. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;

~~7.~~8. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display;~~. A service counter is not an advertising display;~~

~~8.~~9. A menu-type sign at a point of display that lists the name and price of every item at the point of display in ~~text at least 3/8" high~~ legible text;

~~9.~~10. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;

~~10.~~11. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department; ~~and~~

~~11.~~12. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted~~.~~; and

13. An item that does not have a price and is located in, or behind a service counter and available only with the assistance of a sales associate. If a price is displayed, it must meet the requirements of this Chapter.

Awaiting feedback on all-or-nothing pricing behind sales counter. Need to add sales price must have price.

~~Department of~~ Weights and Measures Services Division

R3-7-403. Repealed

R3-7-404. Repealed

R3-7-405. Repealed

R3-7-406. Repealed

R3-7-407. Repealed

R3-7-408. Repealed

R3-7-409. Repealed

R3-7-410. Repealed

R3-7-411. Repealed

R3-7-412. Repealed

ARTICLE 5. PUBLIC WEIGHMASTERS

R3-7-501. Qualifications; License and Renewal Application Process

A. In addition to the requirements of A.R.S. § ~~41-2093~~ 3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:
1. Be at least 18 years old,
2. Be able to operate a scale accurately, and
3. Be able to execute weight certificates properly.

B. A person shall not perform the duties of a public weighmaster ~~or deputy public weighmaster~~ until the person passes the written weighmaster examination administered by the ~~Department~~ Division with a minimum score of 75 percent. A person may not take the examination more than ~~two~~ three times in six months and must wait 7 days before retaking the exam.

C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the ~~Department~~ Division. A separate application shall be submitted for each location the public weighmaster or deputy weighmaster will issue weight tickets.
1. The application form includes:
   a. The applicant's name, address, and telephone number,
   b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
   c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
   d. The applicant's signature.
2. The public weighmaster's application form also includes:
   a. The name of each deputy public weighmaster operating at each location;
   b. A statement that the public weighmaster understands they are responsible to ensure that any deputy weighmasters working at the location are adequately trained and licensed;
   ~~b.~~ c. The name and address of the scale, and
   ~~c.~~ d. The scale description.
3. The deputy weighmaster application shall include a certification that they understand the requirements on a form provided by the Division and be signed by both the public weighmaster and the applicant.
~~3.~~ 4. An applicant may be required to submit evidence of qualifications ~~and shall be examined regarding competence or qualifications~~.
5. The public weighmaster shall ensure all deputy weighmasters are licensed for the location prior to their issuance of weight tickets.
6. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. 41-1080.

D. Before the ~~Department~~ Division issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.

E. The ~~Department~~ Division does not charge a fee to process a change in name or address.

F. In the event a public weighmaster leaves employment, a licensed deputy weighmaster may utilize a public weighmaster stamp for 30 days at a location while a public weighmaster license application is underway.

R3-7-502. Duties

A public weighmaster shall:
1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;

2. Use scales according to applicable laws and rules; ~~and~~
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster; and~~.~~
4. Ensure deputy weighmasters are licensed prior to their issuance of a weight ticket and cancel deputy weighmasters licenses within 10 days of their leaving employment to ensure each location has the correct licensed deputy weighmasters.

R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action

A. The ~~Department~~ Division may deny a weighmaster license for any of the following reasons:
1. Providing false or misleading information;
2. Failing to meet the requirements stated in this Article; or
3. Any of the reasons stated in subsections (B)(1) through (9).

B. The ~~Department~~ Division may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the ~~Department~~ Division has determined that the public weighmaster:
1. Does not have the ability to weigh accurately;
2. Has not correctly made weight certificates;
3. Has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter;
4. Has falsified a weight certificate;
5. Has delegated authority to someone other than a licensed ~~public weighmaster or~~ deputy public weighmaster;
6. Has improperly used a weighmaster's seal of authority;
7. Has presigned certificates for later use;
8. Has issued a weight certificate on which changes or alterations were made; or
9. Has used a scale for public weighing that is not properly licensed.

R3-7-504. Scales and Vehicle Weighing

A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.

B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.

C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.

D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.

E. The ~~Department~~ Division shall separately license and regulate each scale location.

F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.

G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

R3-7-505. Weight Certificates

A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy weighmaster has accurately and personally determined.

B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.

C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.

D. A weight certificate is valid only when properly signed and sealed by the issuing weighmaster or the weighmaster's deputy. The name and image of the seal of the public weighmaster and deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a handwritten signature and embossed seal if the electronically imprinted name and seal is that of the weighmaster or deputy weighmaster who weighed, measured, or counted the commodity. To issue an electronic signature or seal, the weighmaster or deputy weighmaster shall have an individual login associated with the electronic signature and seal or other security measures in place to prevent non-licensed persons from use.

E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.

F. A weight certificate shall state:
1. The date of issuance;
2. The name of the declared owner, agent, or consignee of the material weighed;
3. The accurate weight of the material weighed or counted;
4. The means by which the material is being transported at the time it is weighed or counted;
5. An identification number of the transporting unit, including a license number; and
6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."
7. The printed name, signature, and license number of the Public Weighmaster or Deputy Weighmaster issuing the weight ticket.

G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically, including voids. A weighmaster shall not use another filing system without ~~Department~~ Division approval.

H. A public weighmaster is liable for any forged signatures or electronic signatures.

~~Department of~~ Weights and Measures Services Division

R3-7-506. Seal of Authority

A. A weighmaster shall obtain a seal for the certification of weight certificates at cost through the ~~Department~~ Division.
B. The ~~Department~~ Division shall assign a number to a seal identifying the ~~public weighmaster and the~~ specific location for which the seal is issued.
C. A seal is the property of the state. A weighmaster shall surrender a seal to the ~~Department~~ Division within 30 days after the weighmaster no longer operates as a licensed public weighmaster.
D. A public weighmaster shall have one seal for use at each scale location.
E. A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.
F. A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the ~~Department~~ Division during all business hours.

R3-7-507. Prohibited Acts

A. A person shall not:
1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a ~~person~~ deputy weighmaster authorized to act for a public weighmaster;
3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a ~~person~~ deputy weighmaster authorized to act for a public weighmaster;
4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;
5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weighmaster;
6. Use without authorization the title "licensed public weighmaster" or any similar title;
7. Represent oneself to be a public weighmaster without holding a license issued by the ~~Department~~ Division;
8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
9. Use an unlicensed scale in the performance of public weighmaster duties, or
10. Operate a scale for public weighing unless that person is licensed as a public or deputy weighmaster.

Nothing in this subsection shall be construed to prevent administrative staff of the public or deputy weighmaster from performing administrative duties such as filing weight tickets.

B. People engaged in the business of printing weight certificate forms, their representatives, and the ~~Department~~ Division are exempt from the prohibitions specified in subsections (A)(2) and (3).

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R3-7-601. Qualifications; License and Renewal Application Process

A. Registered service agency.
1. To obtain a license as a registered service agency, an applicant shall provide evidence that:
   a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
   b. The applicant provided its representative with a copy of the portions of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter relating to registered service representative duties;
   c. The applicant:
      i. Possesses the necessary certified standards and testing equipment to service commercial devices; and
      ii. Possesses the necessary test equipment calibrated ~~annually by the~~ in the time frame required by the equipment manufacturer or CARB Executive Orders to perform ~~an air to liquid (A/L) test~~ the required testing of a vapor recovery system or vapor recovery component properly; or
      iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
   d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter.
2. The ~~Department~~ Division shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
3. An applicant for a registered service agency license shall submit an application form, obtained from the ~~Department~~ Division that provides:
   a. Name, address, telephone number, electronic mail address, and facsimile number;
   b. License information from other states;
   c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;

d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
e. Branch office information;
f. Names of registered service representatives and their experience with other registered service agencies or states;
g. License and disciplinary history; and
h. Applicant's signature.

B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the ~~Department~~ Division with evidence that the third-party registered service agency:
1. Holds a valid license issued by the Arizona Registrar of Contractors,
2. Complies with workers' compensation insurance laws, and
3. Maintains liability insurance sufficient to cover the value of work to be performed.

C. Registered service representative.
1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
   a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
   b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
   c. The applicant will operate according to appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders; and this Chapter; and
   d. The applicant has passed the competency examination specified in subsection (D).
2. An applicant for a registered service representative license shall submit an application on a form obtained from the ~~Department~~ Division that provides:
   a. Name, address, telephone number, and facsimile number;
   b. License information from other states;
   c. An indication of whether the applicant is applying to be a registered service representative~~,~~ or a vapor recovery service representative ~~No. 1, or vapor recovery service representative No. 2~~;
   d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
   e. Work experience with other registered service agencies in Arizona or other states;
   f. License and disciplinary history; and
   g. Applicant's signature.
3. An applicant for a vapor recovery registered service representative ~~No. 1~~ license shall maintain and make available to the ~~Department~~ Division upon request evidence of being:
   a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
   b. Determined qualified by the ~~Department~~ Division to test or repair all vapor recovery systems and components.
4. An applicant shall submit information and documentation concerning lawful presence required by A.R.S. 41-1080.

D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a ~~Department~~ Division -administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the ~~Department~~ Division's training class before taking the competency examination. The Division may waive the training class requirement for up to 12 months for new applicants.
2. An applicant shall bring a copy of Handbook 44 ~~and Handbook 112~~ to the examination site. An applicant for a vapor registered service license shall additionally bring copies of CARB test procedures, Executive Orders, and Division Standard Operating Procedures.
3. An applicant shall complete the competency examination within the time specified by the ~~Department~~ Division and pass with a score of 75 percent or greater.
4. The ~~Department~~ Division shall not allow an applicant to take the competency examination more than ~~two~~ three times in six months and the applicant must wait 7 days prior to retaking the exam.
5. The associate director may contract with a 3rd party testing company to administer testing to provide added convenience to registered service representatives. Taking exams through the 3rd party is optional and the registered service representative shall be responsible for payment of any additional costs related to 3rd party testing.

E. As required under A.R.S. § ~~41-2094(G)~~ 3-3454(G), the ~~Department~~ Division shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the ~~Department~~ Division for the registered service representative.

F. Renewal of a registered service representative license. Under A.R.S. § ~~41-2094(D)~~ 3-3454(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with R3-7-603(E). Before complying with R3-7-603(E), the registered service agency shall ensure that once every 36 months a vapor registered service representative completes the Division's training class and takes and passes the Division's written vapor recovery competency examination.
~~1. A vapor recovery registered service representative No. 1 or 2 completes the Department's training class, and~~
~~2. A vapor recovery registered service representative takes and passes the Department's written vapor recovery competency examination, as follows:~~
   ~~a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and~~
   ~~b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.~~

~~Department of~~ Weights and Measures Services Division

G. The ~~Department~~ Division does not charge a fee to process a change in business name or address.

R3-7-602. Duties

A. Registered service agency.

1. A registered service agency shall:
   a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
   b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter, CARB test procedures, and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the ~~Department~~ Division.
   ~~a. The registered service agency shall complete the placed-in-service report in triplicate;~~
   ~~b.~~ a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report ~~mail the original of the properly completed and signed placed-in-service report~~ to the ~~Department~~ Division. If an online placed-in-service report is not available for the device, a paper report shall be submitted;
   ~~c.~~ b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;
   ~~d.~~ c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;
   ~~e.~~ d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;
   ~~f.~~ e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;
   ~~g.~~ f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and
   ~~h. g. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.~~
3. A registered service agency shall have all equipment used for commercial device certification ~~and A/L testing~~ certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.
4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.
5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
6. A registered service agency shall use a form approved by the ~~Department~~ Division to record vapor recovery test results and violations. ~~The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test~~ The test results shall be ~~mailed~~ emailed to the Division within seven days after completion of the test.
7. ~~A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.~~
8. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, ~~approved by the Department,~~ at least ~~10~~ 5 business days before an initial or annual test.

B. Registered service representative.

1. A registered service representative shall:
   a. Install only commercial devices that meet the requirements of this Chapter;
   b. Perform all vapor recovery tests according to this Chapter;
   c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, this Chapter, Handbook 44, ~~Handbook 112,~~ and CARB Executive Orders are met;
   d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
   e. Complete placed-in-service reports accurately.
   f. Report to the Division within 1 hour by email or phone of finding a device that is not certified as part of the Certificate of Conformance under R3-7-203(A) and is installed to fraudulently obtain consumer credit card information. Additionally, the registered service representative shall contact the local law enforcement agency for collection of the device as evidence.
2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R3-7-910. The registered service representative shall notify the ~~Department~~ Division of the stop-sale, stop-use prior to leaving the site. The registered service representative shall notify the Division regarding retest of the site by 6:00 a.m. of the day after

the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the ~~Department~~ Division ~~can~~ may witness the test.

R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

A. The ~~Department~~ Division shall not issue a license or renewal until an applicant pays all appropriate fees.

B. Upon receipt and acceptance of all required documents, fees, and ~~Department~~ Division certification of standards, the ~~Department~~ Division shall issue the agency a license or renewal.

C. The ~~Department~~ Division shall include on a license an assigned number, that remains effective until either withdrawn by the ~~Department~~ Division or until it expires. The ~~Department~~ Division shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.

D. Neither a registered service agency nor a registered service representative shall transfer a license.

E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.

F. The ~~Department~~ Division may deny a license or renewal for any of the following reasons:

1. Providing false or misleading information;
2. Failure to meet annual certification requirements for standards or testing equipment;
3. Failure to meet the requirements stated in this Article; or
4. For any reason that would be grounds for suspension, revocation, or refusal to renew.

G. The ~~Department~~ Division may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter.

H. Every registered service agency and representative shall comply with the ~~Department~~ Division's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § ~~41-2067(F)~~ 3-3416(F).

R3-7-604. Prohibited Acts

A. A person shall not:

1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the ~~Department~~ Division;
2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the ~~Department~~ Division.

B. A registered service agency or registered service representative shall not:

1. Fraudulently complete or file a placed-in-service report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform a function without certified equipment;
4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;
5. Fail to report a commercial device to the ~~Department~~ Division that is found to be out of compliance under R3-7-602 ~~within two business days of finding that device is out of compliance~~;
6. Install, calibrate, or repair a commercial device without placing a ~~sequentially numbered~~ decal or label on the device as prescribed by the associate director ~~Director~~;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-701. Definitions

In addition to the definitions in R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Area A" has the same meaning as in A.R.S. ~~§ 49-541~~ §3-3401.

"Area B" has the same meaning as in A.R.S. ~~§ 49-541~~ §3-3401.

"Area C" has the same meaning as in A.R.S. §3-3401.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § ~~41-2124(J)~~ 3-3493(I).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.

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"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

~~*"Biodiesel" means a diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01.* A.R.S. § 41-2051~~ "Biodiesel" has the same meaning as prescribed under A.R.S. §3-3401.

~~*"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend.* 41-2051~~ "Biodiesel blend" has the same meaning as prescribed under A.R.S. § 3-3401 and contains more than 5 percent biodiesel.

~~"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,~~

~~Is a mono-alkyl ester,~~

~~Meets the standards in ASTM D6751,~~

~~Is intended for use in some engines designed to run on conventional diesel fuel, and~~

~~Is derived from nonpetroleum renewable resources.~~

~~"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.~~

~~"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a blend component in motor fuel~~ "Biofuel" has the same meaning as prescribed under A.R.S. §3-3401.

~~"Biofuel blend" means a motor fuel composed of biofuel and petroleum based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.~~ "Biofuel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Biofuel blender" means a person that modifies a motor fuel by adding a biofuel.

"Biofuel producer" means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend.

~~"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.~~ "Biomass" has the same meaning as prescribed under A.R.S. § 3-3401.

"Biomass-based diesel" has the same meaning as prescribed under A.R.S. §3-3401.

"Biomass-based diesel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

~~"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.~~

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

~~*"Diesel"* or "diesel fuel" *means a refined middle distillate that is used as a fuel in a compression ignition internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051~~ "Diesel fuel" or "Diesel" has the same meaning as prescribed under A.R.S. § 3-3401. Per ASTM D975, diesel fuel may contain 5 percent or less biodiesel.

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

~~"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D5798, which is incorporated by reference in R3-7-702.~~

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R3-7-702.

"Ethanol flex fuel" has the same meaning as prescribed under A.R.S. §3-3401.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the ~~specifications~~ requirements in ASTM D4806, which is incorporated by reference in R3-7-702.

~~"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal-combustion engines. Gasoline does not include diesel fuel or E85 ethanol flex fuel.~~ "Gasoline" has the same meaning as prescribed under A.R.S. §3-3401.

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

~~"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, which are not currently available on the retail market, for an automotive manufacturer.~~ "Manufacturer's proving ground" has the same meaning as prescribed under A.R.S. §3-3401.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

~~*"Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and the ethanol blend E85 as defined in ASTM D5798. A.R.S. § 41-2051*~~ "Motor Fuel" has the same meaning as prescribed under A.R.S. § 3-3401.

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

~~"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.~~ "Motor vehicle racing event" has the same meaning as prescribed under A.R.S. §3-3401.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent~~; not blended with motor fuel~~.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

~~*"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the United State environmental protection agency pursuant to 42 United States Code §7545(f).* A.R.S. § 41-2121~~ "Oxygenate" has the same meaning as prescribed under A.R.S. §3-3401.

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

~~"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,~~

~~Is not a mono-alkyl ester,~~

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~~Is intended for use in engines designed to run on diesel fuel,~~

~~Is derived from petroleum and nonpetroleum renewable resources,~~

~~Meets the requirements of ASTM D975, and~~

~~Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.~~

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

~~"Pressurant" means a blendstock component of an E85 blend for sale within the CBG-covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.~~

"Premium Diesel" means a diesel fuel meeting the requirements in ASTM D975 and in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the associate director ~~Director~~ may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

~~"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.~~ "Product transfer document" has the same meaning as prescribed under A.R.S. §3-3401.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

~~"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend.~~

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not necessarily ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

~~"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.~~ "Vehicle emissions control area" has the same meaning as prescribed under A.R.S. §3-3401.

"VOC" means volatile organic compound.

DRAFT

R3-7-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the ~~Department~~ Division. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 ~~1, 1998~~ Edition, Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
2. API Recommended Practice 1637 (API RP 1637), "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Gasoline Dispensing Facilities and Distribution Terminals," published July 2006, Reaffirmed May 2012, American Petroleum Institute (API), 6300 Interfirst Drive, Ann Arbor, MI, 48108.

~~2.~~3. ASTM Standard D975, ~~2010~~ 2016a (ASTM D975-~~10~~ 16a), "Standard Specification for Diesel Fuel Oils," published ~~April 2010~~ 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

~~3.~~4. ASTM Standard D4806, ~~2009~~ 2016a (ASTM D4806-~~09~~ 16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published ~~July 2009~~ 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

~~4.~~5. ASTM Standard D4814, ~~2009b~~ 2016ee1 (ASTM D4814-~~09b~~ 16ee1), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published ~~September 2009~~ 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

~~5.~~6. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.

~~6.~~7. ASTM Standard D5798, ~~2009b~~ 2015 (ASTM D5798-~~09b~~ 15), "Standard Specification for ~~Fuel~~ Ethanol Fuel Blends ~~(Ed75-Ed85)~~ for Flexible-Fuel Automotive Spark-Ignition Engines," published ~~May 2009~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

~~7.~~8. ASTM Standard D6751, ~~2009a~~ 2015ce1 (ASTM D6751-~~09a~~ 15ce1), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published ~~February 2010~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

~~8.~~9. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

~~9.~~10. The Federal Complex Model ~~as~~ contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.

~~10.~~11. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

~~11.~~12. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

~~12.~~13. ASTM Standard D7467, ~~2009a~~ 2015ce1 (ASTM D7467-~~09a~~ 15ce1), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published ~~June 2009~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

14. SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096-0001 or www.sae.org.

B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers

A. After completing an inspection, the ~~Department~~ Division shall return all motor fuel to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the ~~Department~~ Division collected the motor fuel.

B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the ~~Department~~ Division collected the motor fuel, the ~~Department~~ Division shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.

R3-7-704. Motor Fuel Dispensing Site Price and Grade Posting on External Signs

A. A person who owns or operates a ~~service station~~ motor fuel dispensing site that has an external sign shall ensure that the sign:

1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
2. Identifies the self-service and full-service prices, if different;
3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;

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4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2", whichever is larger, and is visible from the road;
5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
6. Describes ~~diesel~~ the motor fuel that meets ASTMD975 as No. 1 ~~diesel~~Diesel, #1 ~~diesel~~Diesel, No. 2 ~~diesel~~Diesel, #2 ~~diesel~~ Diesel, or premium diesel. Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend. Diesel fuel No. 2 may be labeled on dispensers as Diesel fuel without indication of the fuel grade; ~~and~~
7. Describes motor fuel with an ethanol concentration of 51 to 83 volume percent as ethanol flex fuel; and
8. Identifies the unit of measure of the price, if it is other than per gallon.

B. ~~If~~ For the following terms ~~are~~ used ~~in~~ on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index as determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

C. A person may use an alternative to the descriptions provided in subsection (B) upon written approval by the associate director.

R3-7-705. ~~Price, Octane, and Lead substitute Notification on Dispensers~~ Dispenser Labeling at Motor Fuel Dispensing Sites

The owner or operator of a motor fuel dispensing site shall label dispensers in accordance with the following provisions:

A. Pricing, motor fuel grade, octane rating, and lead substitute. ~~A service station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead substitute addition displayed on a service station motor fuel dispenser:~~

~~1. Is clean, legible, and visible at all times;~~

~~2. Is displayed electronically or with a sign or label on the upper 60 50 percent of each face of the dispenser;~~

~~3.~~1. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;

~~4.~~2. Displays the highest price of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided ~~if~~ the dispenser is capable of dispensing and computing the price of ~~multiple grades of~~ motor fuel at more than one price; and

5. ~~Displays a discount, if offered, in letters at least ¼" in height on each face of the dispenser and next to the undiscounted price;~~

~~6. Displays both a cash and credit price on a dispenser that is capable of electronically displaying both cash and credit prices;~~

~~7. Posts both a cash and credit price on each face of a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices;~~

~~8. Posts a price per gallon sign next to or on a non price computing dispenser for a retail only sale of liquefied petroleum gas used as an alternative motor fuel; and~~

~~9.~~ 3. Complies with the requirements of R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), ~~and~~ (A)(7), (A)(8) and (B).

~~**B.** A person who owns or operates a service station shall ensure that:~~

~~1.~~4. Displays the~~The~~ octane rating of each grade of gasoline ~~is displayed on the upper 60 percent of each face of each dispenser, as prescribed by16 CFR 306~~; and

~~2.~~5. Displays the ~~The~~ signs required by Handbook 130~~,~~ for ~~gasoline~~ motor fuel dispensers that dispense gasoline with lead substitute, ~~are displayed on the upper 60 50 percent of each face of each dispenser~~ in letters at least 1/4" in height.

B. All motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:

1. Gasoline containing fuel ethanol.
   i. Gasoline containing greater than 1.5 percent by weight oxygen or 4.3 percent by volume fuel ethanol shall be labeled with the following statement to indicate the maximum percent by volume of fuel ethanol contained in the gasoline: "May contain up to ____ % fuel ethanol."
   ii. Within the CBG-covered area and area B, gasoline containing fuel ethanol shall be labeled with the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles."
   iii. Gasoline for sale outside of the CBG-covered area with an ethanol content greater than 10 volume percent and less than or equal to 15 volume percent shall additionally be labeled in accordance with 40 CFR 80.1501 [need to include material incorporated by reference].
2. Gasoline containing an oxygenate other than fuel ethanol. Gasoline containing greater than 1.5 percent by weight shall be labeled with the following statement to indicate the type and maximum percent by volume of oxygenate contained in the gasoline: "May contain up to ____ % _____."
3. The labels in subsection B(1) and (B)(2) shall be printed in black and white block letters on a sharply contrasting background with lettering no smaller than ¼ inch. The statements in subsection (B)(1)(i) and (B)(1)(ii) may be printed on the same label or on separate labels if the statements are displayed next to each other.

4. Non-oxygenated gasoline. It is prohibited to label a dispenser as containing no oxygenate if the gasoline contains more than 0.5 percent by volume of any oxygenates.
5. Biodiesel blends. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified.

C. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

D. All dispensers shall have a decal that contains the Division's name and phone number. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. 3-3414(A)(13) satisfies this requirement.

E. All labels required under this section shall be in the upper 50 percent of the front panel of each motor fuel dispenser and shall be clean, legible, and visible at all times.

R3-7-706. ~~Unattended Retail Dispensers~~ Repealed

~~In addition to all labeling and sign requirements in this Article, an owner or operator of an unstaffed service station shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.~~

R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. If ~~Whether~~ a lead substitute is present in the gasoline, ~~and~~ the type of lead substitute present;
9. For a the following biofuel or biofuel blends; ~~the percentage of biofuel in the finished product;~~
   a. Ethanol Flex Fuel shall contain a declaration of the volume percent ethanol in the blend;
   b. Biodiesel and biomass-based diesel blends containing more than 5 percent biodiesel or biomass-based diesel shall contain a declaration of the volume percent biodiesel or biomass-based diesel in the blend, as well as the grade of diesel in the blend; and
   c. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product.
10. The final destination:
   a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
   c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection ~~(A)(10)~~ (A)(10)(b) and (A)(10)(c), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.

D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the ~~Department~~ Division's request.

E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.

F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for ~~Department~~ Division review.

G. The ~~Department~~ Division shall accept a legible photocopy of a product transfer document instead of the original.

H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with R3-7-757.

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R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § ~~41-2122~~ 3-3491. ~~The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § 41-2122 3-3491 for other oxygenates.~~

B. Special provisions for gasoline ethanol blends.

1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
   a. ~~The gasoline ethanol blend shall contain fuel ethanol.~~ The concentration of the ~~fuel~~ ethanol, excluding the required denaturing agent, shall be:
      i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
   b. The ~~fuel~~ ethanol content of the gasoline ethanol blend shall:
      i. Be determined using the appropriate test method listed in ASTM D4814, and
      ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
   a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;
   b. The finished blend complies with the standards in ASTM D4814; or
   c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.
4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

D. Nothing in this subsection shall preclude the sale of gasoline with an ethanol content greater than 10 percent by volume and less than or equal to 15 percent by volume of ethanol outside of the CBG-covered area.

R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed

~~**A.** The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.~~

~~**B.** The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60 percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of oxygenate contained in the oxygenated fuel shall state: "May contain up to _____ % fuel ethanol."~~

~~**C.** In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).~~

~~**D.** The owner or operator of a motor fuel dispensing site shall ensure that:~~

~~1. The label required by subsection (B) is clean, legible, and visible at all times;~~
~~2. The label is printed in black or white block letters on a sharply contrasting background; and~~
~~3. The lettering on labels required by subsections (B) and (C) is no less than 1/4".~~

R3-7-710. Blending Requirements

A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.

B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:

~~1. Add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend;~~

~~2.~~1. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or R3-7-751; ~~or~~

~~3.~~2. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend;~~.~~

3. Upon written permission of the associate director, add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend.

R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-Alcohol Blend Storage Tank Requirements

A. Before a person adds ~~an alcohol-oxygenated~~ the initial gasoline-alcohol blend into a storage tank, the person shall:

1. Test the storage tank for the presence of water and, if any water is detected, remove the water from the storage tank; and
2. Install a fuel filter designed for use with ~~alcohol-oxygenated~~ gasoline-alcohol blends in the fuel line of all motor fuel dispensers that dispense ~~alcohol-oxygenated~~ gasoline-alcohol blends.

B. If water is detected in a storage tank ~~or in an alcohol-oxygenated~~ containing a gasoline-alcohol blend ~~in a storage tank~~, the owner or operator shall empty the storage tank.

R3-7-712. Water in ~~Service Station~~ Motor Fuel Dispensing Site Storage Tanks

A ~~service station~~ motor fuel dispensing site owner or operator shall ensure that water in a ~~service station~~ motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The ~~service station~~ owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

R3-7-713. Motor Fuel Storage Tank Labeling

A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:

1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2, ~~or~~ #2 diesel fuel, or diesel fuel,
6. Premium diesel,

~~6.~~ 7. Gasoline vapor return,

~~7.~~ 8. Biodiesel or biodiesel blend, for blends containing more than 5 percent by volume, or

~~8.~~ 9. E85 or Ethanol flex fuel~~.~~,

10. Other fuel as designated on the product transfer document.

B. An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

E. A person shall not deliver motor fuel to a motor fuel dispensing site or the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A) or the product being delivered meets or exceeds the standards.

F. If tank manhole covers are color-coded, the color coding shall comply with API 1637.

R3-7-714. Additional Requirements for Motor Fuels ~~Other than Arizona CBG~~

A. A person that owns or operates a motor fuel dispensing site, ~~or~~ transmix, or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale ~~at the motor fuel dispensing site or transmix or production facility~~ meets ~~all~~ the ~~appropriate~~ requirements of the applicable specifications in R3-7-702 except that the maximum vapor pressure from May 1 through September 30~~, gasoline shall meet the specifications requirements in ASTM D4814 except maximum vapor pressure~~ shall be 9.0 pounds per square inch or as allowed under R3-7-708(B).

B. The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

~~**C.** The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:~~

~~1. 87 for unleaded, or regular;~~

~~2. 88 for mid-grade, extra, or any other gasoline with an octane rating of 88 or higher; and~~

~~3. 90 for super, high performance, premium, or any other gasoline with an octane rating of 90 or higher.~~

~~**D.**~~**C.** Prohibited activities regarding a motor fuel sold or offered for sale ~~outside the CBG-covered area~~.

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1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § ~~41-2122~~ 3-3491.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

D. Biofuels and biofuel blends. Biofuel producers, biofuel blenders, and biofuel suppliers and owners or operators of motor fuel dispensing sites shall comply with the requirements in R3-7-718.

R3-7-715. Motor Fuel ~~Quality~~ Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the producer of a motor fuel shall test and certify the motor fuel for its motor fuel properties using the methodologies in R3-7-702 ~~and ensure that the motor fuel meets the applicable specifications in the material incorporated by reference in R3-7-702~~.

~~**B.** Unless otherwise required in A.R.S. Title 41 3, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the specifications of ASTM D975.~~

~~**C.**~~**B.** The ~~owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale outside the CBG covered area has its~~ octane rating shall be determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method. ~~The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale outside the CBG covered area has its octane rating posted in accordance with 16 CFR 306.~~

R3-7-716. Sampling and Access to Records

A. The ~~Department~~ Division shall obtain motor fuel samples for testing from:

1. The same motor fuel dispenser used for sales to customers;
2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
3. A bulk storage facility;
4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
6. A final distribution facility;
7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
8. An oxygenate blender or registered supplier; or
9. A transmix or production facility.

B. An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for ~~Department~~ Division inspection upon request.

R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Site Equipment

A. Hold-open latch. If an owner or operator of a motor fuel dispensing site has a dispensing device with a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.

B. Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site with a dispensing device from which diesel fuel is sold at retail shall ensure that the dispensing device has a nozzle spout with a diameter that conforms to SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."

C. Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:

1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or small nominal pore-sized filter;
2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends; and
3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter.

D. From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have a green grip guard and ethanol flex fuel dispensers shall be equipped with nozzles that have a yellow grip guard. No other nozzles shall be equipment with these color grip guards.

E. Motor fuel dispensers shall meet appropriate Underwriter Laboratory ratings and be compatible with the motor fuel being dispensed.

R3-7-718. Additional Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends

A. ~~General~~ Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.
   a. A biofuel producer, biofuel supplier, or ~~person required to register with the EPA under 40 CFR 80, Subpart K or M,~~ biofuel blender shall register with the associate director ~~Director~~, using a form prescribed by the associate director ~~Director~~, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the associate director ~~Director~~ within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).

c. ~~Consequences of failing~~ If a biofuel producer, biofuel supplier, or biofuel blender fails to register under subsection (A)(1)(a), the associate director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.

~~i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and~~

~~ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R3-7-762.~~

d. The ~~Department~~ Division shall maintain and make available to the public a list of all persons registered under this Section.

2. Reporting requirement.

a. A person required to register under subsection (A)(1)(a) shall report to the ~~Department~~ Division by ~~the 15th of the month after producing or supplying biofuel or biofuel blend~~ January 30th of each year for the previous calendar year. The person shall:

i. Report on a form or in a format prescribed by the associate director ~~Director~~;

ii. Provide the ~~information specified in subsections (B) and (C), as applicable~~ total amount of biofuel or biofuel blend produced or supplied in each calendar month, including the total amount of each blend component;

iii. Attest to the truthfulness and accuracy of the information submitted;

iv. ~~Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article;~~ and

~~v.~~ Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.

b. The ~~Department~~ Division shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.

~~3.~~B. Quality Assurance and Quality Control (QA/QC) program ~~requirement~~ requirements.

~~a.~~1. A ~~person required to register under subsection (A)(1)(a)~~ biofuel producer or biofuel blender shall ~~develop~~ implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona~~.~~;

~~b.~~2. ~~A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the~~ The QA/QC program ~~in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual~~ implemented by a biodiesel producer shall include the following minimum requirements:

~~i.~~a. ~~Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer specific requirements~~ A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods. The plan shall include a policy for sample retention;

~~ii.~~b. ~~Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied~~ A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;

~~iii.~~c. ~~Contains procedures that will be used to determine and document that operational quality requirements are met; and~~ The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Division within 24 hours of a request; and

~~iv.~~d. ~~Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.~~ Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards.

~~c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.~~

~~d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.~~

3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:

a. Retention of:

i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;

ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and

iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;

b. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the biofuel blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;

c. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and

d. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Division.

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4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Division upon request.
5. In the event the Division identifies biofuel or biofuel blends that do not meet ASTM requirements, the producer or biofuel blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

~~B. Specific requirements for producers or suppliers of E85.~~

~~1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:~~
   ~~a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:~~
      ~~i. Indicate E85 is not gasoline,~~
      ~~ii. Indicate E85 is intended for use only in a flexible fuel vehicle, and~~
      ~~iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle," and~~
   ~~b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.~~

~~2. Additional requirement for producing E85 for sale in the CBG-covered area. A producer of E85 for sale in the CBG-covered area shall:~~
   ~~a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and~~
   ~~b. Ensure that the fuel ethanol used meets the standards in this Chapter.~~

~~3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:~~
   ~~a. The amount of fuel ethanol used to produce E85 in the previous month,~~
   ~~b. The amount of gasoline used to produce E85 in the previous month,~~
   ~~c. The total amount of E85 produced during the previous month;~~
   ~~d. The following fuel quality properties for the finished E85:~~
      ~~i. Appearance,~~
      ~~ii. American Petroleum Institute gravity,~~
      ~~iii. Organic chloride,~~
      ~~iv. Water content,~~
      ~~v. Vapor pressure, and~~
      ~~vi. Sulfur content.~~

~~4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:~~
   ~~a. The amount of E85 sold during the previous month; and~~
   ~~b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~

~~5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which E85 is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:~~
   ~~a. All samples of E85 are collected after any applicable blend component is added,~~
   ~~b. All samples of E85 are collected using approved ASTM methods,~~
   ~~c. Sampling is done at one of the following rates:~~
      ~~i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;~~
      ~~ii. If E85 is blended or transferred into a delivery truck through the use of computer controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;~~
      ~~iii. If E85 is blended or transferred into a delivery truck without the use of computer controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;~~
   ~~d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798,~~
   ~~e. Test results are used to certify the quality of the E85 produced,~~
   ~~f. Sample handling and storage procedures are specified, and~~
   ~~g. Sample retention time frames are specified.~~

~~6. Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:~~
   ~~a. Notify the Director of the test results,~~
   ~~b. Take all reasonable steps to stop the sale of the non-compliant E85, and~~
   ~~c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.~~

~~C. Specific requirements for producers or suppliers of biodiesel and biodiesel blends.~~

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1. ~~A person shall not sell or offer or expose for sale:~~
   a. ~~Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751,~~
   b. ~~Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and~~
   c. ~~A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.~~
2. ~~The owner or operator of a motor fuel dispensing site shall ensure that:~~
   a. ~~Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:~~
      i. ~~Meets the labeling requirements established by A.R.S. § 41-2083(L),~~
      ii. ~~Is compatible with biodiesel or biodiesel blend, and~~
      iii. ~~Meets all requirements in this Chapter and A.R.S. § 41-2083; and~~
   b. ~~Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~
3. ~~Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG-covered area. A producer of biodiesel or biodiesel blend for sale in the CBG-covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.~~
4. ~~Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:~~
   a. ~~The total amount of biodiesel or biodiesel blend produced in the previous month;~~
   b. ~~The amount of biodiesel used to produce a biodiesel blend in the previous month;~~
   c. ~~The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:~~
      i. ~~Flash point;~~
      ii. ~~Water sediment;~~
      iii. ~~Sulfur content,~~
      iv. ~~Cold soak filterability;~~
      v. ~~Cloud point;~~
      vi. ~~Acid number;~~
      vii. ~~Free glycerin;~~
      viii. ~~Total glycerin; and~~
      ix. ~~Distillation, 90 percent; and~~
   d. ~~The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:~~
      i. ~~Sulfur content,~~
      ii. ~~Aromatic hydrocarbon content,~~
      iii. ~~Cetane index,~~
      iv. ~~Acid number,~~
      v. ~~Distillation, and~~
      vi. ~~American Petroleum Institute gravity.~~
5. ~~Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:~~
   a. ~~The amount of biodiesel or biodiesel blend sold during the previous month; and~~
   b. ~~A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~
6. ~~Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:~~
   a. ~~All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;~~
   b. ~~All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;~~
   c. ~~Sampling is done at one of the following rates:~~
      i. ~~If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;~~
      ii. ~~If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;~~
      iii. ~~If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;~~
   d. ~~All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;~~
   e. ~~Test results are used to certify the quality of the biodiesel or biodiesel blend produced;~~

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~~f. Sample handling and storage procedures are specified; and~~

~~g. Sample retention time-frames are specified.~~

~~7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.~~

~~8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:~~

~~a. Notify the Director of the test results,~~

~~b. Take all reasonable steps to stop the sale of the non-compliant biodiesel or biodiesel blend, and~~

~~c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.~~

~~D. Specific requirements for producers or suppliers of petroleum-based renewable diesel. A producer or supplier of petroleum-based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:~~

~~1. Meets the standards in ASTM D975, and~~

~~2. Is identified as specified in R3-7-701.~~

C. Ethanol flex fuel sold or offered for sale within the CBG-covered area shall:

1. Use fuel ethanol that meets the standards in this Chapter, and
2. Have a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).

D. Requirements for motor fuel dispensing sites.

1. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that any ethanol flex fuel, biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from and traceable to a person registered with the Division under subsection (A)(1) and the Environmental Protection Agency under 40 CFR 80, subparts K or M.

E. Exemptions.

1. A biofuel producer, biofuel supplier, or biofuel blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or biofuel blender located within Arizona is not required to register under subsection (A)(1)(a);
2. Diesel fuel containing five percent by volume or less biodiesel is exempt from this Section if the following conditions are met:
   a. The diesel fuel meets the standards of ASTM D975; and
   b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
3. A biofuel producer, biofuel supplier, or biofuel blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.
4. Gasoline containing up to 10 percent ethanol is exempt from this section.

R3-7-719. Repealed

R3-7-720. Renumbered

R3-7-721. Renumbered

R3-7-722. Reserved through R3-7-748. Reserved

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to R3-7-750 through R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the associate director ~~Director~~ under A.R.S. § ~~41-2124~~ 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in R3-7-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in R3-7-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R3-7-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the associate director ~~Director~~ under R3-7-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter or other terminal.

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in R3-7-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R3-7-751(G), (H), and (I), and meets the requirements in:

R3-7-751(A) beginning April 1 through October 31 of each year, and

R3-7-751(B) beginning November 1 through March 31 of each year.

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"Winter" means November 1 through March 31.

R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the associate director ~~Director~~ before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the associate director ~~Director~~ and include the following information:
1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
   a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
   b. If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the ~~Department~~ Division or its authorized agent to collect samples and access records as provided in R3-7-716.

C. A person registered under subsection (B) shall notify the associate director ~~Director~~ within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.

E. The ~~Department~~ Division shall maintain a list of all registered suppliers.

R3-7-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility:
1. Sulfur: ~~500~~ 95 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: ~~70~~ 30 percent volume.
5. E300: ~~100~~ 70 percent volume.
6. Maximum vapor pressure:
   a. October: 9.0 psi.
   b. November 1 - March 31: 9.0 psi.
   c. April: 10.0 psi.
   d. May: 9.0 psi.
   e. June 1 - September 30: 7.0 psi.
   f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in R3-7-708(B), during April only.
7. Oxygen and oxygenates:
   a. Minimum content:
      i. November 1 - March 31: 10 percent fuel ethanol by volume. If A.R.S. § ~~41-2124(E)~~ 3-3493(C) petition in effect: 2.7 percent oxygen by weight as approved by the associate director ~~Director~~.
      ii. April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § ~~41-2122~~ 3-3491.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: ≥ 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

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B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.

1. Sulfur: 80 ppm by weight (max),
2. Aromatics: 30% by volume (max),
3. Olefins: 10% by volume (max),
4. 90% Distillation Temp. (T90): 330° F (max),
5. 50% Distillation Temp. (T50): 220° F (max),
6. Vapor Pressure: 9.0 psi (max), and
7. Oxygenate - Ethanol;
   a. Minimum oxygenate content - 10 percent fuel ethanol by volume;
   b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492; and
   c. Alternative minimum fuel ethanol content may be used if approved by the associate director ~~Director~~ under A.R.S. § ~~41-2124(D)~~ 3-3493(C).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D4806 and the following:

1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director ~~Director~~ on a form or in a format prescribed by the associate director ~~Director~~. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the associate director ~~Director~~ on a form or in a format prescribed by the associate director ~~Director~~. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the ~~Department~~ Division approves using the criteria stated in R3-7-759.

H. Certification and use of Predictive Model for alternative PM gasoline formulations.

1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the associate director ~~Director~~ by either:
   a. Submitting to the associate director ~~Director~~ a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
   b. Notifying the associate director ~~Director~~, on a form prescribed by or in a format acceptable to the associate director ~~Director~~, of:
      i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. A registered supplier shall deliver the certification required under subsection (H)(2) to the associate director ~~Director~~ before transporting the PM alternative gasoline formulation.

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4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
   a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
   b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
      i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
      ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
      iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
   c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).
   d. If a registered supplier notifies the associate director ~~Director~~ under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:
      i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or
      ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations.

A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
   a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or
   b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 ~~to~~ through September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 ~~to~~ through September 15 during that same period.

L. Consequence of failure to comply with averages.

1. In addition to a penalty under R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:

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a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;

b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the associate director ~~Director~~, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director ~~Director~~ in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.

2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
   a. The registered supplier submits a compliance plan to the associate director ~~Director~~ that includes:
      i. An implementation schedule for actions to correct noncompliance, and
      ii. Reporting requirements that document implementation of the compliance plan,
   b. The associate director ~~Director~~ approves the plan,
   c. The registered supplier implements the plan, and
   d. The registered supplier achieves compliance.
3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.
   a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.
   b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the associate director ~~Director~~, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the associate director ~~Director~~ in writing of the beginning date of the probationary period.
4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NOx survey failure. Each time a NOx survey conducted under R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:
1. >27 percent for the VOC emissions reduction percentage, May 1 - through September 15, Table 1, column C; and
2. >6.8 percent for the NOx emissions reduction percentage, May 1 - through September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:
1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

R3-7-751.01. Repealed

R3-7-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. **B.** A registered supplier shall make the certification on a form or in a format prescribed by the associate director ~~Director~~. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the associate director ~~Director~~ on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.

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1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
   a. Sample date;
   b. Identity of blend or product sampled;
   c. Container or other vessel sampled;
   d. The final blend or shipment volume; and
   e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R3-7-759.
2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the associate director ~~Director~~ shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the associate director ~~Director~~ that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
3. A registered supplier shall provide to the associate director ~~Director~~ any records maintained by the registered supplier under this Section within 20 days of a written request from the associate director ~~Director~~. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the associate director ~~Director~~ shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of R3-7-751, unless the registered supplier demonstrates to the associate director ~~Director~~ that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the associate director ~~Director~~ by fax or e-mail before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the associate director ~~Director~~ for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The associate director ~~Director~~ shall approve a QA/QC program only if the associate director ~~Director~~ determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the associate director ~~Director~~ for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director ~~Director~~ shall determine whether the changed QA/QC program meets the original quality objectives. The associate director ~~Director~~ shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
   a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
   b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      i. An independent laboratory shall collect a representative sample from each batch;
      ii. The associate director ~~Director~~ or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
      iii. The independent laboratory shall, for each sample identified by the associate director ~~Director~~ or designee, analyze the sample using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The associate director ~~Director~~ or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the associate director ~~Director~~ or designee. The registered supplier shall submit a duplicate of the sample to the associate director ~~Director~~ within 24 hours of the written request.
3. Designation of independent laboratory.
   a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
   b. A registered supplier shall identify the designated independent laboratory to the associate director ~~Director~~ under the registration requirements of R3-7-750.
   c. A laboratory is considered independent if:
      i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
      ii. The laboratory does not have any interest in any registered supplier, and
      iii. The registered supplier does not have any interest in the designated laboratory.
   d. Notwithstanding the restrictions in subsection (F)(3)(c), the associate director ~~Director~~ shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.

e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.

4. A registered supplier shall ensure that its designated independent laboratory:
   a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      i. The producer's or importer's assigned batch number for the batch sampled;
      ii. The volume of the batch;
      iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      iv. The date and time the batch became Arizona CBG or AZRBOB;
      v. The date and time the sample is collected;
      vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
   b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the associate director ~~Director~~ for up to 180 days;
   c. Submits to the associate director ~~Director~~ a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
      i. The results of the independent laboratory's analyses for each fuel property, and
      ii. The information specified in subsection (F)(4)(a) for each sample; and
   d. Supplies to the associate director ~~Director~~, upon request, a duplicate of the sample.

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the associate director ~~Director~~ by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.

1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
   a. Sulfur content: 25 ppm by weight,
   b. Aromatics: 2.7% by volume,
   c. Olefins: 2.5% by volume,
   d. Fuel ethanol: 0.4% by volume,
   e. Vapor pressure: 0.3 psi,
   f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   h. E200: 2.5% by volume,
   i. E300: 3.5% by volume, or
   j. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
   a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
   b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

R3-7-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:

1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the ~~Department~~ Division under R3-7-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the associate director ~~Director~~.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

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D. A pipeline shall provide the associate director ~~Director~~ with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the associate director ~~Director~~ by fax or email within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the associate director ~~Director~~ by fax or email within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in R3-7-751(A) or (B), as applicable.

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the associate director ~~Director~~ for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The associate director ~~Director~~ shall approve a QA/QC program only if the associate director ~~Director~~ determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the associate director ~~Director~~ for review and approval. Within 30 days of receiving the changed QA/QC program, the associate director ~~Director~~ shall determine whether the changed QA/QC program meets the quality objectives originally approved by the ~~Department~~ Division. The associate director ~~Director~~ shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in R3-7-752 and oxygenate blenders in R3-7-755, as applicable.

I. A pipeline is not liable under R3-7-761 if it follows all of the procedures in this Section.

R3-7-754. Downstream Blending Exceptions for Transmix

A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. One of two methods shall be used to measure the transmix as it is blended into the product stream:

1. Meters, calibrated at least twice each year; or
2. Tank gauge as per API Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the ~~Department~~ Division. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.

1. Determining whether AZRBOB complies with Arizona CBG standards.
   a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in R3-7-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the ~~Department~~ Division shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding fuel ethanol to the AZRBOB.
   b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the fuel ethanol added to the representative sample under subsection (A)(1)(a) is representative of the fuel ethanol the registered supplier reasonably expects will be subsequently added to the AZRBOB.
2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the ~~Department~~ Division shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:

a. The transferee is a registered oxygenate blender and will add fuel ethanol in the amount (or within the range of amounts) designated in R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the amount (or within the range of amounts) of fuel ethanol designated in R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.

2. A person shall not sell or supply Arizona CBG from a final distribution facility if the amount or range of amounts of fuel ethanol designated in R3-7-757 has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:

1. Fuel ethanol in the amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the ~~Department~~ Division. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.

1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in R3-7-759...;" and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:

1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the associate director ~~Director~~ under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the associate director ~~Director~~ to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the associate director ~~Director~~, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a ~~Department~~ Division official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the associate director ~~Director~~ within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the associate director ~~Director~~ under subsection (G) and the results are accurate;
    c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    d. Identification of the area from which the samples were collected;
    e. Address of each motor fuel dispensing site from which a sample was collected;
    f. Dates on which the samples were collected;
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. Name and address of each laboratory at which the samples were analyzed;
    i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    j. Number of samples collected at each motor fuel dispensing site; and
    k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the associate director ~~Director~~. The associate director ~~Director~~ shall inform the third party of the date selected at least 10 business days before sampling is to begin.

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G. To obtain the associate director's ~~Director's~~ approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:
   1. Submit the plan to the associate director ~~Director~~ no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
   2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the associate director ~~Director~~ a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.
   1. Requirement to add fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB in the amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
   2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending fuel ethanol with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.
   3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the ~~Department~~ Division. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
      a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB."
      b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R3-7-759...;" and
      c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."
   4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
      a. An oxygenate blender that produces Arizona CBG by blending fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
         i. Obtain a flow proportional composite sample after the addition of fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;
         ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in R3-7-759; and
         iii. Determine the volume of the resulting Arizona CBG.
      b. If the test results for the Arizona CBG indicate that it does not contain the amount of fuel ethanol specified by the ranges of the applicable test methods, the oxygenate blender shall:
         i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
         ii. Begin an investigation to determine the cause of the noncompliance;
         iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and fuel ethanol, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
         iv. Notify the associate director ~~Director~~ in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
      c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the associate director ~~Director~~ determines that the corrective action has remedied the noncompliance.
   5. Recordkeeping and records retention.
      a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
         i. Sample date,
         ii. Identity of blend or product sampled,
         iii. Container or other vessel sampled,
         iv. Volume of final blend or shipment,
         v. Oxygen content as determined under R3-7-759, and
         vi. Results from all testing.
      b. The associate director ~~Director~~ shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director ~~Director~~ that the Arizona CBG meets the standards in R3-7-751.
      c. Within 20 days of the associate director's ~~Director's~~ written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or

shipment of Arizona CBG, the associate director ~~Director~~ shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the associate director ~~Director~~ that the Arizona CBG meets the standards and limits under R3-7-751.

6. Notification requirement. An oxygenate blender shall notify the associate director ~~Director~~ by fax or email before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the associate director ~~Director~~ for approval at least three months before transporting Arizona CBG. The associate director ~~Director~~ shall approve a QA/QC program only if the associate director ~~Director~~ determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).
8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).
9. Within 24 hours of the associate director's ~~Director's~~ or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the associate director ~~Director~~:

1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in R3-7-751(A) or (B) if the person obtains prior written approval from the associate director ~~Director~~ based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the ~~Department~~ Division.

R3-7-757. Product Transfer Documentation; Records Retention

A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:

1. Volume of Arizona CBG or AZRBOB being transferred;
2. Location of the Arizona CBG or AZRBOB at the time of transfer;
3. Date of the transfer;
4. Product transfer document number;
5. Identification of the gasoline as Arizona CBG or AZRBOB;
6. Minimum octane rating of the Arizona CBG or AZRBOB;
7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the minimum quantity of fuel ethanol contained in the Arizona CBG;
8. If the product transferred is AZRBOB for which fuel ethanol blending is intended:
   a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of fuel ethanol";
   ~~b. Designation of the AZRBOB as suitable for blending with fuel ethanol;~~
   ~~c.~~b. Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent fuel ethanol and weight percent oxygen content; and
   ~~d.~~c. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for fuel ethanol amount or range of amounts; and
9. The final destination:
   a. When a terminal is the transferor, the owner or the operator of the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and

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c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.

E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.

F. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.

G. When a person transfers custody or title of fuel ethanol that is intended for use ~~as a blend component~~ in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the fuel ethanol complies with the standards for fuel ethanol intended for use ~~as a blend component~~ in AZRBOB or Arizona CBG.

H. Upon request by the associate director ~~Director~~ or designee, a person shall present product transfer documents to the ~~Department~~ Division within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

R3-7-758. Repealed

R3-7-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure fuel ethanol in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. A test method that the ~~Department~~ Division determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The ~~Department~~ Division has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the ~~Department~~ Division shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The ~~Department~~ Division shall approve a proposed test method only if the ~~Department~~ Division determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan submitted by ADEQ to EPA in August 2013 and subsequent supplement submitted July 2014 is approved by EPA.

Table A. Arizona ~~Department of~~ Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)[A]	1.65	D5580-00	1.4

Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 $(X)^{1.133}$
Olefins	V%	D1319-02a (2003)	0.32 $(x)^{0.5}$	D6550-00 (2005) if correlated to D1319	0.32 $(X)^{0.5}$: Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004)[B]	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 $(x)^{0.92}$ wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).
[B] A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).
Footnotes:
1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."
2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

R3-7-760. Compliance Surveys

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the associate director ~~Director~~. The associate director ~~Director~~ shall approve a compliance survey program plan if it:
1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the associate director ~~Director~~ shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the associate director's ~~Director's~~ order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the associate director ~~Director~~ to ensure the validity of analysis results.

D. If the associate director ~~Director~~ determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the associate director ~~Director~~ shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements:
1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in R3-7-702;

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2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted ~~between~~ May 1 ~~and~~ through September 15 as follows:

1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in R3-7-702; and
2. The CBG-covered area fails the NOx series of compliance surveys conducted ~~between~~ May 1 ~~and~~ through September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The associate director ~~Director~~ shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:

1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
   a. The surveyor shall not be an employee of any registered supplier,
   b. The surveyor shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the surveyor;
2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the associate director ~~Director~~, within 30 days following submission of the survey report required under subsection (G)(6);
5. Requires that the surveyor permit a ~~Department~~ Division official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the surveyor to submit a report of each survey to the associate director ~~Director~~ within 30 days after sampling for the survey is completed that includes the following information:
   a. Name of the person conducting the survey;
   b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
   c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
   d. Identification of the area from which survey samples were selected;
   e. Dates on which the survey was conducted;
   f. Address of each facility at which a sample was collected, and the date of collection;
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. Name and address of each laboratory at which samples were analyzed;
   i. Description of the method used to select the facilities from which a sample was collected;
   j. Number of samples collected from each facility;
   k. Justification for excluding a collected sample from the survey, if one was excluded; and
   l. Average VOC and NOx emissions reduction percentage.

H. An independent surveyor shall begin each survey on a date selected by the associate director ~~Director~~. The associate director ~~Director~~ shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.

I. To obtain the associate director's ~~Director's~~ approval of a compliance survey program plan, the person seeking approval shall:

1. Submit the plan to the associate director ~~Director~~ no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.

J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier

shall submit to the associate director ~~Director~~ a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with R3-7-751, the following are liable for the violation:

1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.

1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
   a. That the violation was not caused by the person or person's employee or agent;
   b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
   c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.
2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
   a. A violation of law other than A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 6, this Article, or an act of sabotage or vandalism;
   b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
   c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a ~~service station~~ motor fuel dispensing site or fleet owner facility, a person shall present evidence:

1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in R3-7-751; and
2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in R3-7-751:
   a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
   b. The person remedies the violation as soon as practicable.

R3-7-762. Penalties

Any person who violates any provision of this Article is subject to the following:

1. Prosecution for a Class 2 misdemeanor under A.R.S. § ~~41-2113(B)(4)~~ 3-3473(B)(4);
2. Civil penalties in the amount of $500 per violation under A.R.S. § ~~41-2115~~ 3-3475; and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § ~~41-2066(A)(2)~~ 3-3415(A)(2).

Table 1. Type 1 Arizona CBG Standards

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 -through Sept. 15	≥ 27.5	≥ 29.0	≥ 25.0	N/A
NOx Emission Reduction (%) May 1 -through Sept. 15	≥ 5.5	≥ 6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	≥ 0.0	N/A	N/A	N/A

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Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	N/A 0.0*	N/A N/A	N/A 0.0	N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	N/A 0.0	N/A N/A	N/A 0.0	N/A ****

* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § ~~41-2122~~ 3-3491.
** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility.
*** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31.
**** As specified in A.R.S. § ~~41-2122~~ 3-3491.

Table 2. Type 2 Arizona CBG Standards

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol** November 1 - March 31 April 1 - October 31	10% fuel ethanol**	– –	10% fuel ethanol**	% by vol.
The maximum oxygen content EtOH year around			4.0	% by weight

* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and R3-7-751(G), (H), and (I) for the use of the PM.
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.
A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through March 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the associate director ~~Director~~ under A.R.S. § ~~41-2124(D)~~ 3-3493(C).
NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

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Table 3. **Repealed**

ARTICLE 8. REPEALED

R3-7-801. **Repealed**

R3-7-802. **Repealed**

R3-7-803. **Repealed**

R3-7-804. **Repealed**

R3-7-805. **Repealed**

R3-7-806. **Repealed**

R3-7-807. **Repealed**

R3-7-808. **Reserved**

R3-7-809. **Repealed**

R3-7-810. **Repealed**

R3-7-811. **Repealed**

R3-7-812. **Repealed**

ARTICLE 9. GASOLINE VAPOR CONTROL

R3-7-901. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the ~~Department~~ Division. The documents incorporated by reference contain no later amendments or editions:

1. Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA-450/3-91-022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. The following CARB test procedures:
   a. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   b. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   c. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   d. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   e. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

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f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

h. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-902. Exemptions

A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with R3-7-913 or that is subject to A.R.S. § ~~41-2132~~ 3-3512, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.

B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § ~~41-2135(B)~~ 3-3515(B) may obtain an exemption by submitting a written request to the ~~Department~~ Division attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § ~~41-2135(B)~~ 3-3515(B). By the 15th of each month, beginning the month after the ~~Department~~ Division approves the exemption, the person shall submit a written throughput report to the ~~Department~~ Division. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the ~~Department~~ Division deems the exemption void.

C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the ~~Department~~ Division. The ~~Department~~ Division shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:

1. Purchase and sale of diesel fuel, and
2. State lottery sales net commissions and incentives

D. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

R3-7-903. Equipment and Installation

A. A person subject to A.R.S. § ~~41-2135~~ 3-3515 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with R3-7-913.

B. The ~~Department~~ Division shall reject a vapor recovery system or component from future installation if:

1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-901, or
3. The vapor recovery system or component fails greater than 20% of ~~Department~~ Division inspections for that system or component or the ~~Department~~ Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the ~~Department~~ Division provides at least 30 days public notice of its proposed rejection.

C. The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining ~~Department~~ Division approval under R3-7-904.

D. If ~~Department~~ Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

E. A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:

1. Adding or replacing a gasoline storage tank that is equipped with a ~~Department~~ Division approved stage II vapor recovery system;
2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
3. Replacing a ~~Department~~ Division -approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the ~~Department~~ Division a written change order to an authority to construct plan approval on a form provided by the ~~Department~~ Division if a modification of the approved vapor recovery system or component is needed after the ~~Department~~ Di-

vision issues an authority to construct plan approval. The person shall not make any modification until the ~~Department~~ Division approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the ~~Department~~ Division, on a form provided by the ~~Department~~ Division, the following:
   1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
   2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
   3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
   4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
   5. The application fee specified under R3-7-906.

D. After review and approval of the authority to construct plan, the ~~Department~~ Division shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
   1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for ~~Department~~ Division review.
   2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
   3. An authority to construct plan approval is not transferable.

E. The ~~Department~~ Division shall deny an authority to construct plan for any of the following reasons:
   1. Providing incomplete, false, or misleading information; or
   2. Failing to meet the requirements stated in this Chapter.

F. If excavation is involved, the ~~Department~~ Division may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the ~~Department~~ Division notice by fax or e-mail at least two business days before the underground piping is complete. The ~~Department~~ Division shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to R3-7-905.

H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the ~~Department~~ Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the ~~Department~~ Division at a time approved by the ~~Department~~ Division and include any of the following relevant to the specific vapor recovery system installed:
   1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
   2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in R3-7-901(1) is used, the ~~Department~~ Division shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in R3-7-901(2) is used, the ~~Department~~ Division shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The ~~Department~~ Division shall compute combined tank vapor space for manifolded systems;
   3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
   4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
   5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
   6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
   7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
   8. Procedures specified by a manufacturer for testing the vapor recovery system.

B. If there is a difference between a testing contractor's and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The ~~Department~~ Division shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the ~~Department~~ Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the ~~Department~~ Division approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the ~~Department~~ Division shall fail the initial inspection of that site.

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G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
   1. The ~~Department~~ Division shall take enforcement action if the person fails to timely reschedule the inspection.
   2. The registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
   3. The ~~Department~~ Division shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

R3-7-906. Fee

A. The authority to construct plan approval fee is $250.

R3-7-907. Operation

A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:
   1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
   2. When more than 1/4 of the cone is missing for vapor assist systems having bellowless nozzles with flexible vapor deflecting cones;
   3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;
   4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
   5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
   6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
   7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;
   8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
   9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
   10. A dispenser mounted vacuum pump that is not functioning;
   11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
      a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
      b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
      c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;
      d. Does not swivel at the hose/nozzle connection; or
      e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;
   12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;
   13. The stage I installation is not properly installed or maintained, in that:
      a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;
      b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
      c. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or

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d. A fill tube is missing, not sealed, has holes, broken or damaged overfill preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;

14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;
15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
17. A vacuum assist system with an inoperative central vacuum unit;
18. A vacuum assist system with an inoperative vapor processing (burner) unit;
19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or
20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.

E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § ~~41-2135(E)~~ 3-3515(E) and this Article.

F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the ~~Department~~ Division by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the ~~Department~~ Division.

G. For proper operation of a stage I system, under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-908. Training and Public Education

A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated and maintained properly in accordance with the manufacturer's specifications and CARB certification. The operator shall maintain documentation of this training on-site and make the documentation available to the ~~Department~~ Division on request.

B. In addition to the information required in A.R.S. § ~~41-2135(E)~~ 3-3515(E), an operator of a gasoline dispensing site with stage II vapor recovery shall display a ~~Department~~ Division telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal signs, and from up to 6 feet away for permanent (non-decal) signs. Decals shall be located on the upper 60% of each face of each dispenser.

R3-7-909. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2135(B)~~ 3-3515(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the ~~Department~~ Division as required under R3-7-902(B). If any throughput requirement provided in A.R.S. § ~~41-2135(B)~~ 3-3515(B) and this Article is exceeded for any month, the owner or operator shall notify the ~~Department~~ Division in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.

D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the ~~Department~~ Division upon request.

R3-7-910. Annual Inspection and Testing

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the ~~Department~~ Division approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).

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E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the ~~Department~~ Division issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The ~~Department~~ Division shall take enforcement action if a person does not comply with this subsection.

R3-7-911. Compliance Inspections

The ~~Department~~ Division shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the ~~Department~~ Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-910.

R3-7-912. Enforcement

If the ~~Department~~ Division finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the ~~Department~~ Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-913. Stage II Decommissioning

A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:
   1. If the owner or operator holds a license issued by the ~~Department~~ Division numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
   2. If the owner or operator holds a license issued by the ~~Department~~ Division numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the ~~Department~~ Division for approval ~~no later than December 31, 2015~~prior to decommissioning at an alternate time period.
   1. An owner or operator that holds licenses issued by the ~~Department~~ Division for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
   2. An owner or operator that holds licenses issued by the ~~Department~~ Division for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).

C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):
   1. The business name and mailing address on all licenses;
   2. The name and telephone number of an individual with whom the ~~Department~~ Division can communicate;
   3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
   4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
   5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
      a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
      b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.

D. The ~~Department~~ Division shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The ~~Department~~ Division shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The ~~Department~~ Division may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;

E. The owner or operator of a gasoline dispensing site that is exempt under R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;

F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the ~~Department~~ Division, is submitted to the ~~Department~~ Division at least 10 days before the planned decommissioning and includes the following information:
   1. Name of the owner or operator of the gasoline dispensing site,
   2. Address of the gasoline dispensing site,
   3. Name of the decommissioning contractor,
   4. Decommissioning dates,
   5. Name of the vapor testing registered service representative, and
   6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.

G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the ~~Department~~ Division receives the changed information at least 24 hours before the scheduled start of decommissioning.

H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in R3-7-901(4) with the following exceptions:
   1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
   2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and
   3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in R3-7-1005(A)(1).

I. The decommissioning contractor shall:
   1. Complete a Decommissioning Checklist using a form or format provided by the ~~Department~~ Division,
   2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
   3. Submit a copy of the completed Decommissioning Checklist to the ~~Department~~ Division within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.

J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under R3-7-910 but shall be subject to the initial inspection and testing prescribed under R3-7-1005 within 60 days after decommissioning is complete.

K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.

L. The ~~Department~~ Division shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § ~~41-2115~~ 3-3475 on the owner or operator of the gasoline dispensing site.

ARTICLE 10. STAGE I VAPOR RECOVERY

R3-7-1001. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the ~~Department~~ Division. The documents incorporated by reference contain no later amendments or editions:

1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-1002. Exemptions

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline

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dispensing site shall submit an annual throughput report to the ~~Department~~ Division, using a form prescribed by the ~~Department~~ Division, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) was exceeded, the ~~Department~~ Division shall deem the exemption void.

R3-7-1003. Equipment and Installation

A. The ~~Department~~ Division shall reject a vapor recovery system or component from future installation if:
1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-1001; or
3. The vapor recovery system or component fails greater than 20% of ~~Department~~ Division inspections for that system or component or the ~~Department~~ Division receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the ~~Department~~ Division provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining ~~Department~~ Division approval under R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the ~~Department~~ Division as required under A.R.S. § ~~41-2132~~ 3-3512.

C. If ~~Department~~ Division inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a ~~Department~~ Division approved stage I vapor recovery system;
2. Modifying, adding, or replacing underground vent piping; or
3. Conducting construction under R3-7-913(H)(2).

B. A person shall file with the ~~Department~~ Division a written change order, using a form provided by the ~~Department~~ Division, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the ~~Department~~ Division issues an authority to construct plan approval. The person shall not make any modification until the ~~Department~~ Division approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the ~~Department~~ Division, on a form provided by the ~~Department~~ Division, the following:
1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
5. The application fee specified under R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
7. Has tank vent pipes with a minimum inside diameter of:
   a. Two inches if the pipe is not manifolded, or
   b. Three inches from the point of manifold if the pipe is manifolded;
8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);

~~10. Has a one-eighth inch threaded tap on the vent pipe between six and eight feet above ground level;~~

10. ~~11.~~ Has risers into gasoline storage tanks that are capped with UL-approved caps;

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11. ~~12.~~ Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;

12.~~13.~~ Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY *88*/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and

13.~~14.~~ Complies with other requirements outlined in the authority to construct permit.

E. After review and approval of the authority to construct plan, the ~~Department~~ Division shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.

1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for ~~Department~~ Division review.
2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

F. The ~~Department~~ Division shall deny an authority to construct plan for any of the following reasons:

1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the ~~Department~~ Division may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the ~~Department~~ Division notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The ~~Department~~ Division may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-1005. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the ~~Department~~ Division with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the ~~Department~~ Division at a time approved by the ~~Department~~ Division and include the following tests:

1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
3. A Tie-Tank test using CARB TP-201.3C test procedure; and
4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.

B. If there is a difference between a testing contractor's test results and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The ~~Department~~ Division shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the ~~Department~~ Division when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the ~~Department~~ Division approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the ~~Department~~ Division shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.

1. The ~~Department~~ Division shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.

R3-7-1006. Fee

The authority to construct plan approval fee is $250.

~~Department of~~ Weights and Measures Services Division

R3-7-1007. Operation

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or ~~Department~~ Division approval under A.R.S. § ~~41-2132~~ 3-3512 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:

1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
2. Vent pipes do not meet the CARB-specified paint color code specified in R3-7-1004(D)(13);
3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
   a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
   b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
   c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
   d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.

E. For proper operation of a stage I system under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-1008. Training and Public Education

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training on-site and make the documentation available to the ~~Department~~ Division on request.

R3-7-1009. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2132(B)~~ 3-3512(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the ~~Department~~ Division within 24 hours after request. The owner or operator shall submit to the ~~Department~~ Division the throughput information required under R3-7-1002(B). If any throughput requirement provided in A.R.S. § ~~41-2132(B)~~ 3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the ~~Department~~ Division in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under R3-7-913 shall maintain a copy of the decommissioning checklist required under R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the ~~Department~~ Division upon request.

R3-7-1010. Annual Testing and Inspection

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date,

and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the ~~Department~~ Division approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the ~~Department~~ Division may perform or may require registered service representatives to perform additional tests under R3-7-1005(A)(4) during the annual inspection and testing. The ~~Department~~ Division shall provide registered service agencies with six months' notice before requiring additional annual testing under R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the ~~Department~~ Division's test results, the ~~Department~~ Division's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

G. A person shall notify the ~~Department~~ Division when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the ~~Department~~ Division approves the reinspection date and time.

H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the ~~Department~~ Division issues to registered service agencies.

I. A person that cancels an annual inspection shall notify the ~~Department~~ Division by calling the ~~Department~~ Division's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the ~~Department~~ Division in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The ~~Department~~ Division shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The ~~Department~~ Division shall take enforcement action if a person does not comply with this subsection.

J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

R3-7-1011. Compliance Inspections and Additional Test Methods

The ~~Department~~ Division shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the ~~Department~~ Division shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-1010.

R3-7-1012. Enforcement

If the ~~Department~~ Division finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the ~~Department~~ Division shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-1013. Stage II Vapor Recovery

If the ~~Department~~ Division identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the ~~Department~~ Division shall issue an administrative order and civil penalty under A.R.S. § ~~41-2115~~ 3-3475 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § ~~41-2115~~ 3-3475.

Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

Ullage (gallons)	Minimum Pressure after Five Minutes (Inches Water Column)
500	0.73
550	0.80
600	0.87
650	0.93
700	0.98
750	1.03
800	1.07
850	1.11
900	1.15
950	1.18
1000	1.21
1200	1.32
1400	1.40
1600	1.46

~~Department of~~ Weights and Measures Services Division

1800	1.51
2000	1.56
2400	1.62
2600	1.65
2800	1.67
3000	1.69
3500	1.73
4000	1.76
4500	1.79
5000	1.81
6000	1.84
7000	1.86
8000	1.88
9000	1.89
10000	1.90
15000	1.93
20000	1.95
25000	1.96

DRAFT

Appendix B
Written Comments Received

Michelle Wilson

From: Kelly Davis <KDavis@ethanolrfa.org>
Sent: Friday, February 10, 2017 3:59 PM
To: Michelle Wilson
Subject: E15 in Arizona

Hi Michelle, in reviewing the draft yesterday it references the allowance of E15 outside of the CBG covered areas (R3-7-705) but I could not see the allowance in the R3-7-708 Gasoline Oxygenate Blends section. We have updated D4814 to allow E15. It seems subsection B needs to include. Please advise.

R3-7-705

D. Gasoline for sale outside of the CBG-covered area with an ethanol content greater than 10 volume percent and less than or equal to 15 volume percent shall additionally be labeled in accordance with 40 CFR 80.1501 [need to include material incorporated by reference].

R3-7-708. Gasoline Oxygenate Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § ~~41-2122~~ 3-3491. ~~The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § 41-2122 3-3491 for other oxygenates.~~

B. Special provisions for gasoline ethanol blends.
   1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
      a. ~~The gasoline ethanol blend shall contain fuel ethanol.~~ The concentration of the ~~fuel~~ ethanol, excluding the required denaturing agent, shall be:
         i. From May 1 through September 15, at least nine percent and ~~no more than 10 percent by volume~~ of the gasoline ethanol blend; and
         ii. From September 16 through April 30, at least 1.5 percent by weight ~~and no more than 10 percent by volume~~ of the gasoline ethanol blend; and
      b. The ~~fuel~~ ethanol content of the gasoline ethanol blend shall:
         i. Be determined using the appropriate test method listed in ASTM D4814, and
         ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
   2. The provision in subsection ~~(B)(1) is effective for gasoline ethanol blends sold:~~
      ~~a. Outside the CBG-covered area year around, and~~
      b. Within the CBG-covered area during April.
   3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
      a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
         i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
         ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;
      b. The finished blend complies with the standards in ASTM D4814; or
      c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
         i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
         ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived.
   4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

Kelly Davis
Director of Regulatory Affairs
Renewable Fuels Association
16024 Manchester Road, Suite 200
Ellisville, Missouri 63011
636-594-2286 office
314-413-5534 cell

Roger Fisk

From: Michelle Wilson
Sent: Friday, February 10, 2017 9:31 AM
To: Roger Fisk
Subject: FW: added "iii" for outside CBG Covered Area
Attachments: Rules 705.docx

Written comments from 2/9/17 workshop to print and add to the previously printed comments.

From: Mark Ellery [mailto:mark@caljet.com]
Sent: Thursday, February 09, 2017 12:40 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: added "iii" for outside CBG Covered Area

Mark V. Ellery
Manager, Quality Assurance and Research

The Jet Companies
5601 W. Van Buren Street
Phoenix, Arizona 85043 U.S.A.

Office: 602-272-5522, Ext. 113
Mobile: 602-663-3760
Email: mark@caljet.com

B. All motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:

1. ~~Oxygenated gasoline~~Gasoline containing fuel ethanol.

i. Gasoline ~~with an ethanol content of~~containing greater than 1.5 percent ~~or more~~ by weight ~~of~~ oxygen, or 4.3 percent by volume fuel ethanol~~. The label shall~~ shall be labeled as follows to indicate the maximum percent by volume ~~of oxygenate~~of fuel ethanol contained in the ~~oxygenated fuel by stating~~: "May contain up to ____ % fuel ethanol." ~~Additionally,~~

ii. Within~~in~~ the CBG-covered area and area B, gasoline containing fuel ethanol shall be labeled with ~~the required label shall contain~~ the follow-ing statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles."

iii. Gasoline for sale outside of the CBG Covered Area.....from (D)

2. Gasoline containing an oxygenate other than fuel ethanol:

i. Gasoline containing greater than 1.5 percent or more by weight of oxygen shall be labeled with the following statement to indicate the type and maximum percent by volume of oxygenate contained in the fuel: "May contain up to % .",

3. The statements required in section B 1 I and ii above may be printed on the same label or on separate labels if the statements are displayed next to each other. These labels shall be printed in black and white block letters on a sharply contrasting background with lettering no smaller than ¼ inch. ~~If other oxygenates are used with 1.5 percent or more by weight of oxygen, , a label~~

~~2.~~ 4. Non-oxygenated gasoline. It is prohibited to label a dispenser as ~~"non-ethanol containing"~~containing no oxygenate if the gasoline contains more than 0.5 percent by volume ~~ethanol~~of an oxygenate.

3. Biodiesel blends. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified.

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Michelle Wilson

From: Brian Kernke <Brian.Kernke@musketcorp.com>
Sent: Thursday, July 21, 2016 2:41 PM
To: Michelle Wilson
Subject: RE: Deadline for Comments
Attachments: AZ W&M comments by Musket Corp.docx; Musket-BioSphere B100-B99.9 Specification-Rev 7 - 09-25-2015.pdf

Michelle,

Attached are my comments and my internal specification for biodiesel.

See you in Denver.

BK

From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Monday, July 18, 2016 11:26 AM
To: Brian Kernke
Subject: [EXT] RE: Deadline for Comments

I have requested comments by this Thursday. If you need more time, please let me know.

Thanks,

Note: My email address has changed, please update it in your records and address book to mwilson@azda.gov.

Michelle Wilson
Associate Director
Department of Agriculture
Weights and Measures Services Division
1688 W. Adams Street, Phoenix, AZ 85007-2606
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

From: Brian Kernke [mailto:Brian.Kernke@musketcorp.com]
Sent: Monday, July 18, 2016 9:24 AM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Deadline for Comments

Hi Michelle,

Hope you had a great weekend. When is the cutoff date for comments? Please let me know.

Thanks,
BK

Love's Travel Stops & Country Stores, Inc.

From the Love's Family of Companies: This email neither constitutes an agreement to conduct transactions by electronic means nor creates or amends any legally binding contract or enforceable obligation in the absence of a fully signed written contract authorizing the same. This email, and any attachments and/or documents linked to this email may contain confidential and/or proprietary information and are nonetheless intended to be viewed and used legally by the individual(s) to whom addressed. Please immediately delete from your system any email you receive from us in error. Any views or opinions in this email or any attachment are solely those of the author and do not necessarily represent those of our companies.

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R3-7-705. ~~Price, Octane, and Lead-substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling

D. Biodiesel blends. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers biodiesel or biodiesel blends meets the following requirements:

1. The labeling requirements established under A.R.S. § 3-3433(K);
2. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified; and
3. Every motor fuel dispenser that dispenses biodiesel, B99 or B100, or a biodiesel blend containing diesel fuel with a biodiesel percentage greater than five percent shall be labeled with the following information on the upper 50 percent of the front panel of each motor fuel dispenser: "CHECK OWNER'S MANUAL" in a type at least 1/4 inch in height by 1/32 inch stroke and block-style letters of a color that contrasts with the background color.

Musket Corporation blends biodiesel in 35 states in the 41 states where we have Love's Travel Stop locations.

Only 3 states require "Check Owner's Manual" labels on dispensers (CA, FL & TN). We believe these labels are not necessary and customers don't even look at them.

R3-7-712. Water in Service Station Motor Fuel Storage Tanks

A service station owner or operator shall ensure that water in a service station motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The service station owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

We agree 1" should be the max.

R3-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends

A. ~~General~~ Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.
   a. A biofuel producer, biofuel supplier, or ~~person required to register with the EPA under 40 CFR 80, Subpart K or M,~~ blender shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
   c. ~~Consequences of failing~~ If a biofuel producer, biofuel supplier, or blender fails to register under subsection (A)(1)(a), the Director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.
      ~~i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and~~
      ~~ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R20-2-762.~~
   d. The Department shall maintain and make available to the public a list of all persons registered under this Section.
2. Reporting requirement.

a. A person required to register under subsection (A)(1)(a) shall report to the Department by ~~the 15th of the month after producing or supplying biofuel or biofuel blend~~ January 30th of each year for the previous calendar year. The person shall:
   i. Report on a form or in a format prescribed by the Director;
   ii. Provide the ~~information specified in subsections (B) and (C), as applicable~~ total amount of biofuel or biofuel blend produced or supplied in each calendar month, including the total amount of each blend component;
   iii. Attest to the truthfulness and accuracy of the information submitted;
   iv. ~~Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article;~~ and
   ~~v.~~ Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.

b. The Department shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.

Not one state we blend biodiesel in requires that the retail blender has to report the total amount of biodiesel blended over the whole year or even any volumes at all. We believe this is over-burdensome on the retailer.

~~3.~~B. Quality Assurance and Quality Control (QA/QC) program ~~requirement~~ requirements.
   ~~a.~~1. A ~~person required to register under subsection (A)(1)(a)~~ biofuel producer or blender shall ~~develop~~ implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona~~.~~;
   ~~b.~~2. ~~A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the~~ The QA/QC program ~~in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual~~ implemented by a biofuel or biodiesel producer shall include the following minimum requirements:
      ~~i.~~a. ~~Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer-specific requirements~~ A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods;
      ~~ii.~~b. ~~Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied~~ A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;
      ~~iii.~~c. ~~Contains procedures that will be used to determine and document that operational quality requirements are met; and~~ The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Department within 24 hours of a request;
      ~~iv.~~d. ~~Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.~~ Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and
      e. A sample of each batch produced is retained and maintained for at least 60 days following production of the batch;
   ~~c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.~~

Not one state Musket blends biodiesel in has a requirement for the biodiesel blender to implement a QA/QC Program. We believe this is over-burdensome on the retailer.

   ~~. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.~~
   3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:

a. Retention of:
   i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;
   ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and
   iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;
b. A sampling and testing program that ensures or, as applicable, certifies that the biofuel blends produced meet applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods and shall be retained for 30 days following collection;
c. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;
d. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and
e. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Department; and

4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Department upon request.
5. In the event the Department identified biofuel or biofuel blends that do not meet ASTM requirements, the producer or blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

We agree that all biodiesel producers we purchase product from must be EPA facility registered and provide Musket a COA for every load. Musket Corporation has a Fuel Quality Department and all COA's are reviewed daily and retained in a COA archive. In addition to producer in-house laboratory COA's required on all loads, Musket requires that all producers submit a 3rd party full slate analysis every 6 months.

Not one state we blend biodiesel requires that the blender have a Sampling and Testing Program and retain samples for 30 days. We believe this is not necessary and over-burdensome on the retailer. We believe it is the supplier at the rack that is responsible to disclose biodiesel % in all diesel loads on the BOL/PTD. Retailers cannot test every diesel load being delivered to their store.

At Love's Travel Stops we turn our tanks daily and never have a biodiesel tank inactive for 30 days but we agree with this type of testing and believe it is necessary.

C. Biofuel standards and testing methodologies

2. Biodiesel and biodiesel blends. A person shall not sell, offer, or expose for sale biodiesel or biodiesel blends unless the following requirements are met:
   a. Biodiesel meets the requirements in ASTM D6751,
   b. A biodiesel blend containing more than five percent but less than 20 percent biodiesel by volume meets the requirements in ASTM D7467, and
   c. If a biodiesel blend contains more than 20 percent biodiesel by volume, the diesel fuel used in the blend meets the requirements in ASTM D975 and the biodiesel blend stock meets the requirements in ASTM D6751.
3. Non-compliant biofuel and biofuel blends. If a test result for a biofuel or biofuel blend shipped from a facility indicates the biofuel or biofuel blend does not comply with the requirements of this Chapter, the biofuel producer or blender shall:
   a. Notify the Director within 24 hours of identification of the non-compliant biofuel or biofuel blend,

b. Immediately take all reasonable steps to stop sale of the non-compliant biofuel or biofuel blend, and

c. Take steps reasonably calculated to determine the cause of the noncompliance and prevent future occurrences of noncompliance.

Musket agrees with the Biofuel standards and testing methodologies. Just like all states we blend biodiesel, the diesel and biodiesel must meet ASTM specs (D975 & D6751). Blends higher than B5 must meet D7467. Musket Corp has its own internal spec that is more stringent than the ASTM specs required that help us ensure we are always meeting the ASTM standard specifications for biodiesel blends.

Roger Fisk

From: Michelle Wilson
Sent: Friday, February 10, 2017 9:38 AM
To: Roger Fisk
Subject: FW: [Ext:] E85/Ethanol Flex Fuel Labeling

Written comments from 2/9/17 workshop to print and add to the previously printed comments.

From: Huff, Sandy [mailto:Sandy.Huff@cstbrands.com]
Sent: Friday, February 10, 2017 9:38 AM
To: Michelle Wilson <mwilson@azda.gov>
Subject: RE: [Ext:] E85/Ethanol Flex Fuel Labeling

Good morning Michelle,

The "E85" ID on the price sign and dispenser would be reasonable approach since it would be costly to change the price signs and dispenser spandrels.

Respectfully,

Sandy Huff
Compliance Coordinator
CST Brands
sandy.huff@CSTBrands.com
Office:210-692-2521
Cell: 559-936-6326

From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Thursday, February 09, 2017 3:10 PM
To: 'MHerman697@aol.com' <MHerman697@aol.com>; Amanda Gray <Amanda@apma4u.org>; lthompso@quiktrip.com; Brian Kernke <Brian.Kernke@musketcorp.com>; Neil Gunn (Neil.gunn@WNR.com) <Neil.gunn@WNR.com>; Derek Regal (derek.b.regal@tsocorp.com) <derek.b.regal@tsocorp.com>; Mark Ellery (Mark@caljet.com) <Mark@caljet.com>; Valerie Ughetta <vughetta@autoalliance.org>; Kinzig, Russ [KinzigR@kindermorgan.com] <KinzigR@kindermorgan.com>; 'James, O'Neal,' <James.O'Neal@magellanlp.com>; 'Pavlu, Angela' <angela.pavlu@glencore-us.com>; 'Sweeney, Tim' <tim@brownevans.com>; Randy Plummer (rplummer@quiktrip.com) <rplummer@quiktrip.com>; Susie Stevens REP Western States Petroleum Association <susie@stevensandstevenslaw.com>; Huff, Sandy <Sandy.Huff@cstbrands.com>; White, Tom <Tom.White@inspectorate.com>; Vance Klager <vance.klager@fhr.com>; Kelly Davis (KDavis@ethanolrfa.org) <KDavis@ethanolrfa.org>
Cc: Damien DeSantiago <ddesantiago@azda.gov>
Subject: [Ext:] E85/Ethanol Flex Fuel Labeling

Thank you for attending the workshop today and your input. In the transition from E85 to Ethanol Flex Fuel, people have relabeled their dispensers to "Ethanol Flex Fuel;" however, there are many stickers plastered all over the pumps in addition to external road signage that still state the commonly known term "E85". Missouri adopted the following rule to address this issue:

The term "E85" is a permissible substitution for product identity for street side posting and dispenser advertising in lieu of the term "Ethanol Flex Fuel" for fuels with an ethanol concentration no less than fifty-one (51) volume percent ethanol and no greater than eighty-three (83) volume percent ethanol;

This seems like a reasonable approach to me since it is the commonly-used term to describe this fuel and is also the term used on vehicle gas caps. Below are 2 picture examples. In these pictures, anything that states "85% ethanol" would need removed, however signage stating "E85" could stay.

Please let me know if you have any opinions or issues with including something similar to this in the proposed rule.

Thank you,

Michelle Wilson
Associate Director
Department of Agriculture
Weights and Measures Services Division
1688 W. Adams Street, Phoenix, AZ 85007-2606
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

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Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:49 PM
To: Roger Fisk
Subject: Emailing: Response To Comments Workshop July 2016
Attachments: Response To Comments Workshop July 2016.docx

Your message is ready to be sent with the following file or link attachments:

Response To Comments Workshop July 2016

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Summary of Comments Received and Responses Following July 8, 2016 Stakeholder Workshop
January 27, 2017

Comment #	Rule Section	Comment	Response
1	701	Clarify under the definition of biodiesel blend (or elsewhere) that a biodiesel blend is a biodiesel content of 6% or greater	Clarified.
2	701	Does the definition of motor fuel include electricity? The definition of motor vehicle excludes electric power.	The definition of motor fuel does not include electricity. ARS 3-3414(B) provides authority for the associate director to inspect metering devices, including devices used to measure usage of electricity. Additionally, R3-7-302(A) includes requirements to follow the method of sale in Handbook 130, which includes Retail Sales of Electricity Sold as a Vehicle Fuel (Section 2.34, Uniform Regulation for the Method of Sale of Commodities). Therefore, we have removed the method of sale requirements from section R3-7-705.
3	701	Modify definition of terminal since another terminal may have ownership. "Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody~~, but not ownership,~~ of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal	Clarified per suggestion with minor modification.
4	701,705	The 2016 edition of the NIST handbook is incorporate and explicitly does not encompass subsequent editions or amendments. It may be helpful to clarify in Article 7, section 705 that the same definition and constraint applies for Article 7 as for Article 1. It would also be helpful to explain with the initial rule whether the restriction to the 2016 edition is because state law or regulation disallows incorporation by reference of future, not yet published content.	Arizona law requires adoption of materials as of a specific date to allow public comment prior to adoption. Article 1 states all materials are applicable to the entire chapter, which includes Article 7.
5	702	Update to most recent publications of ASTM and SAE specifications	This is incorporated by reference in R3-7-702(A)(1). It is not customary to include effective dates.

DRAFT

		(A)(1) The most recent update to 16 CFR 306 was published on January 14, 2016, however we would like to note that the effective date of the rule was July 14, 2016. It may add clarity to list the effective date of the rule.	
6	702(A)	Add NIST handbook 130 in this section?	This is in R3-7-101, which applies to the entire chapter.
7	702(B)	Is there another SIP approval pending?	Yes. Arizona submitted a SIP in August 2013, updated in May 2014, which is still pending approval. R3-7-702(B) has been clarified to indicate the SIP being referenced.
8	704(A)6 and (7)	(A)(6) Adds clarity that fuels meeting ASTM D975, including up to B5, may be labeled as "Diesel" (A)(7) Updated Arizona Code subsection reference 6. Describes diesel ~~the~~ fuel that meets ASTM D975 [CVX1]as Diesel No. 1-diesel, Diesel #1-diesel, Diesel No. 2-diesel, Diesel #2 diesel, or premium diesel, Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend; and 7. Describes gasoline ethanol blends meeting the requirements of R20R3-27-705(E) as ethanol flex fuel; and	Clarified per suggestion.
9	704(B)	We agree with the definitions provided. Automakers do not support sale of gasoline with an octane lower than 87 AKI.	No action requested.
10	705	Establish your state labeling requirement for biomass-based diesel other than biodiesel consistent with FTC (orange and black label). The Truck and Engine Manufacturers Association still does not have an official position on the use of this product (even when it meets D975) in some of their member companies' engines. Recommended language:	Clarified per suggestion with modifications.

		R3-7-705 I. All ~~other~~ motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply: D. Biodiesel blends. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers biodiesel or biodiesel blends meets the following requirements: 1. The labeling requirements established under A.R.S. § 3-3433(K); 2. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified; ~~and~~ ~~3. Every motor fuel dispenser that dispenses biodiesel, B99 or B100, or a biodiesel blend containing diesel fuel with a biodiesel percentage greater than five percent shall be labeled with the following information on the upper 50 percent of the front panel of each motor fuel dispenser: "CHECK OWNER'S MANUAL" in a type at least 1/4 inch in height by 1/32 inch stroke and block style letters of a color that contrasts with the background color.~~ E. Ethanol flex fuel. The owner or ~~f~~operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers ethanol flex fuel with an ethanol concentration of no less than 51 and no more than 83 volume percent is labeled in accordance with 16 CFR 306. F. Electricity sold as a motor vehicle fuel. Electricity sole as a motor vehicle fuel shall meet the requirements of Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.34. G. Premium diesel. Fuel labeled as "premium diesel" shall meet the specifications in R20-2-714(D). H. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number. ~~I. All other motor fuels shall meet the labeling requirements of 16 CFR 306.~~ J. All dispensers shall have decal that with the Division's name and phone number displayed in the upper 50 percent of the front panel of each dispenser. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. 3-3414(A)(13) satisfies this requirement. J. All labels required under this section shall be clean, legible, and visible at all times.	
11	705(A)(4)	Allows for dispensers that can display multiple prices to reset the per gallon price to the highest price, until an action by the consumer (such as inserting club card or phone #) results in displaying a lower price. Additional comments are in the marked up copy. 4. Displays the highest price of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided if the dispenser is capable of dispensing and computing the price of multiple grades of motor fuel, if more than one price.[CVx2]	Clarified per suggestion.
12	705(C)(1)	We propose clarifying language to read: "The owner or operator of a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 10 percent or higher by volume of oxygen (E11 or higher) is clearly labeled with the fuel ethanol volume percent information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if greater than 10 percent fuel ethanol by volume." This will avoid mixing weight vs. volume percent, and confusing consumers by trying to label for <E11. Test methodology included in the Arizona regulations may need to be	The requirement to label the dispenser for the consumers is applicable if the ethanol-gasoline blend is 1.5 percent or more by weight of oxygen or 4.3 percent by volume fuel ethanol. The actual label required to be on the dispenser must indicate the maximum percent by volume oxygenate by stating

		updated to volume rather than weight percent (or a conversion to volume percent).	"May contain up to ____% fuel ethanol." Per this comment and comment #31, we agree that clarity is lacking regarding where E15 can be sold and labeling requirements. We have added a statement in R3-7-705(E) regarding E15 labeling requirements and have removed a requirement in R3-7-708 that provides for a maximum oxygen content of 4.0 percent by weight for fuel ethanol.
13	705(C)(5)	Suggest a reasonable limit is specified. Detectable lower limits by ASTM D5599 = 0.1%wt. ASTM D4814 defines a gasoline-ethanol blend as gasoline along with a substantial amount (more than 0.35% by mass oxygen) of ethanol. Ethanol free gasoline could be added to a tank truck containing a heel of E10 and the resulting gasoline could have a detectable level of ethanol. 5. The owner or operator of a motor fuel dispensing site shall not label gasoline as "non-ethanol containing" if the gasoline contains a detectable amount of more than 1.0 volume percent ethanol.[CW3]	Modified to no more than 0.5 percent by volume.
14	705(D)	Align the rules with Handbook 130 and 16 CFR 306. "Consult Owner's Manual" for biodiesel blends above B20 (instead of B5)	Modified per suggestion.
15	705(D)	Only 3 states require "Check Owner's Manual" labels on dispensers (CA, FL & TN). We believe these labels are not necessary and customers don't even look at them.	For consistency and clarity, we have adopted the FTC requirements for motor fuel labeling as amended January 14, 2016, effective July 14, 2016.
16	705(D)(3) 751(B)(7)(a) and (b)	We strongly support a label for biodiesel blends >B5 directing consumers to "CHECK OWNERS MANUAL." This provides consumers with a reminder that their vehicle (or other equipment) may require different fuel than is being offered at a particular pump. Many light duty vehicles on the road today were designed for no more than B5 blends, while many trucks and some passenger vehicle s are warranted for use of up to B10 or B20. For the same reasons we support the need to label the % of biodiesel (FAME) content in the final product blend.	For consistency and clarity, we have adopted the FTC requirements for motor fuel labeling as amended January 14, 2016, effective July 14, 2016.
17	705(E)	Arizona's prior provision was consistent with NCWM Handbook 130(2016) calling for precautionary language "CHECK OWNER'S MANUAL" for ethanol flex fuel, but	For consistency and clarity, we have adopted the FTC requirements for

		we did not see that language in this draft. We urge this language continue to be required on all dispensers distributing higher than E10 ethanol blends, in additions to the FTC language in 16 CFR 306 to remind consumers to check what is appropriate for their vehicle and also other types of engines.	motor fuel labeling as amended January 14, 2016, effective July 14, 2016.
18	707	(A)(9)(c) Per A.R.S . 3433.L. PTD disclosure is not required unless biodiesel blends contain more than 5% biodiesel. (A)(9)(d), (e) Aligns with FTC requirements for biomass-based diesel labeling b. Biodiesel shall contain a declaration of the volume percent biodiesel in the blend. for blends containing more than 5 percent by volume, as well as the grade of diesel in the blend[CVX4]; c. Biomass-based diesel containing more than 5 up to 20 percent by volume shall disclose "contains biomass-based diesel in quantities between 5 percent and 20 percent" as well as the grade of diesel in the blend[CVX5]; d. Biomass-based diesel shall contain a declaration of the volume percent biomass-based diesel in the blend, for blends containing more than 20 percent by volume, as well as the grade of diesel in the blend; e. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product; and;	Modified this section to mirror the biodiesel requirements of declaring any amount over 5 percent. Because the FTC rules require labeling dispensers if the diesel contains over 5% biomass-based diesel, this information would need to be relayed in the PTD to notify the station owner/operator to ensure dispensers may be properly labeled.
19	708(A)	It would beneficial to also write the provision for maximum oxygen content in terms of the allowable volume percent ethanol. If necessary, a parenthetical could be added and use a separate section from ethanol provisions to address other oxygenates.	Due to density variation in gasoline blendstocks, the oxygen content of an oxygenated fuel may vary on a weight basis even though the volume percent remains fixed. This standard was implemented to mirror EPA requirements. (See Question 3, EPA Reformulated Gasoline and Anti-Dumping Questions and Answers July 1, 1994 through May 2, 1996).
20	708(B)	Enforcement testing is by D4815 and the results are only measuring pure ethanol not, denatured fuel ethanol. The required denaturant is 1.96 v% and currently 5% max, going down to 3 v% in 2017. Recommend the following B. Special provisions for gasoline ethanol blends. 1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi: a. ~~The gasoline ethanol blend shall contain fuel ethanol.~~ The concentration of ~~the fuel~~ ethanol~~, excluding the required denaturing agent,~~ shall be: i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and b. The ~~fuel~~ ethanol content of the gasoline ethanol blend shall: i. Be determined using ~~the appropriate test method listed in~~ ASTM ~~D4814, and~~ ASTM method D4815 ~~ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.~~	Language regarding fuel ethanol clarified. D4815 is referee method, but other methods exist (D5501). We refer to D4814 for all gasoline-related test methods instead of incorporating by reference all of the various test methods that may be used.

21	710(B)	Remove reference to CBG	R3-7-755 and R3-7-756 provide restrictions on blending AZRBOB and CBG which would prohibit blending of a CBG with a gasoline containing 20 percent by volume oxygenate. Additionally, it is questionable that addition of a gasoline with 20 percent by volume of oxygenate to a gasoline with low oxygenate would result in a compliant gasoline. Therefore, this section has been modified to require written permission to allow such blending.
22	710(B)(3)	Change to "Empty the storage tank."	It is clear that the end result is to have compliant gasoline in the tank.
23	712	We agree 1" should be the max.	No change.
24	703	(A)(8) In alignment with ASTM D975, allows blends of biodiesel or renewable diesel up to 5% by volume to be labeled as diesel ~~7.~~ 8. Biodiesel or biodiesel blend, for blends containing more than 5 percent by volume, or	Clarified as suggested.
25	713(E)	This seems to prohibit dropping premium gasoline into midgrade or regular or premium diesel into a regular diesel tank	Clarified.
26	714(C)	Suggest deleting and renumber following subsections. The state requirements for grades of gasoline are established in R3-7-704(B). Dispensing sites can rely on PTDs given them per 16 CFR 306.	Deleted 714(C) and clarified 704(B)
27	714(F)	Infers that blenders are not producers which conflicts with definition of producer	Clarified. There are separate definitions for biofuel blender and biofuel producer.

28	715	The words "certify" and "ensure" are particularly important. A "certification" is done by a producer who is obligated to certify the quality of a given motor fuel. Anyone downstream, unless altered, ensues that the certification from the producer is carried through to the end user. You should consider that testing to ensure claims of premium diesel is expensive. The rules should be clear that producer shall certify that it meets the standards. **R3-7-715. Motor Fuel ~~Quality~~ Testing Methods and Requirements** **A.** Unless otherwise required in A.R.S. Title 41 3, Chapter ~~15~~ 19, or this Chapter, the producer of a motor fuel shall ~~test the motor fuel for its motor fuel properties using the methodologies in R20-2-702 R3-7-702 and ensure~~ certify that the motor fuel produced was tested under, and meets the requirements of, those applicable test methodologies and specifications ~~meets the applicable specifications in the material~~ incorporated by reference in ~~R20-2-702~~ R3-7-702. **B.** Unless otherwise required in A.R.S. Title 41 3, Chapter ~~15~~ 19, or this Chapter, ~~a person testing~~ #1 ~~or~~ and #2 diesel fuel shall ~~use the methodologies~~be tested under, and meet the requirements of, those applicable test methodologies and specifications incorporated by reference in R3-7-702, ~~and meet the specifications of requirements in~~ ASTM D975. **C.** The owner or operator of a transmix ~~or production~~processing facility shall ensure that the octane rating of all gasoline sold or offered for sale from the facility ~~outside the CBG covered area has its octane rating determined and certified~~is tested in accordance with 16 CFR 306, using and defined by the sum of the road octane number (RON), ~~the average of~~is determined by the ASTM D2699 test method and the motor octane number (MON), as determined by the ASTM D2700 test method, divided by 2 ~~also known as the (R+M)/2 method~~. **D.** The owner or operator of a motor fuel dispensing site shall ensure that the octane rating of all gasoline sold or offered for sale ~~outside the CBG covered area has its octane rating~~is posted in accordance with 16 CFR 306. **~~D~~E.** A marketer or jobber who transfers gasoline shall ~~certify~~ ensure that the octane rating of all gasoline transferred is provided to the transferee in accordance with 16 CFR 306. **~~E~~F.** Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the producer of ~~Premium~~ premium diesel shall be ~~certified to meet~~ certify that the premium diesel was tested under, and meets the requirements of, those methodologies and specifications incorporated by reference in R3-7-702 for diesel fuel and the~~all performance properties~~requirements outlined within~~under Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).~~ **G.** The owner or operator of a motor fuel dispensing site shall ensure that all premium diesel sold or offered for sale meets the requirements of this Chapter.	After review of this section, it was streamlined and clarified by only addressing 3 areas: 1) Producers must test and certify motor fuel per the applicable standard; 2) the octane rating shall be determined and certified per 16 CFR 306, which would include any party in the chain to whom this is applicable (producer, supplier, marketer, jobber, etc.); and 3) sets standards for certification of premium diesel.
29	715(B),(C) And (D)	Paragraphs (B) and (C) are unnecessary, they are covered above. Paragraph (D) is unnecessary as PTDs fulfill this requirement.	This section was clarified as indicated above.
30	717	We support use of uniform dispenser pump handle colors for diesel and diesel blends (Green) and ethanol flex fuel (51% to 83% ethanol)(yellow). It should be specified that if a mid-level ethanol gasoline blend up to E50 is dispensed for use in a flex fuel vehicle only, the dispenser handle color should also remain yellow. Ideally, a national color code system would be of benefit to consumers. We also support requiring proper SAE J285 nozzle specifications as a key means to prevent consumer misfueling.	The requirements of A.R.S. 3-3436 have been incorporated into rule.
31	707(C)(3)	We recommend amending to: All Biodiesel, biodiesel blends, diesel, and kerosene dispensers at a flow rate of 15 gallons per minute or lower have a 10-micron or smaller nominal pore-sized filter. High flow rate dispensers with a flow above 15 gallons per minute may have a 30-	This is a topic that has been discussed at the National Conference of Weights and Measures and has not been incorporated in the handbooks to date. The Division will review this

		micron or smaller nominal pore-sized filter. The 10-micron filtration for slower flow rates is needed for fuel cleanliness requirement for light duty diesel vehicles.	requirement if/when it is incorporated into the handbooks.
31	708(B)(1)(a) and (b)	We have heard that by Arizona statute, only up to 10% ethanol (E10) is allowed in Arizona's Clean Burning Gasoline (CBG) (analogous to RFG), required in Phoenix and surrounding county areas. We also understand that CBG-required areas represent about half the volume of gasoline sold in the State. We further understand that E15 and Ethanol Flex Fuel can be sold in the "conventional gasoline" areas of Arizona not subject to RFG (CBG or SIP) mandates. However, from the face of the proposed regulatory language, we found the status of ability to sell E15 and Flex Fuel ambiguous. It would be helpful to better explain their status in the regulation or at least in a Preamble with any final rule. If an additional workshop will be held, this would be a good topic to cover in more depth.	We agree that this is a good topic to discuss in more depth with interested parties and will discuss further at the next workshop.
32	708, 751(A)(6)	We had a difficult time tracking the interaction of all the different (not co-located) provisions regarding vapor pressure limits for various gasoline products and seasons. **We suggest that the final regulations include or at least incorporate by reference a single, comprehensive table showing all of the State's gasoline vapor pressure requirements,** for all months of the year, for CBG, conventional gasoline, ethanol gasoline blends, E15, Mid-Level Blends/Flex Fuel, and showing the relevant jurisdictions (*i.e.*, those covered by CBG or other specific gasoline/ethanol blend requirements, as well the conventional gasoline jurisdictions). Also, in 7-708 (B) (2) (b) and 7-751 (A) (6), there is no rationale provided for allowing 10 psi gasoline for CBG covered areas only in the month of April, versus maintaining a consistent RVP requirement of 9 psi with March and May.	We will take this suggestion under consideration to prepare a summary table that can be placed on the website. April falls outside of the winter and summer RVP control timeframes; and therefore, reverts to ASTM standards.
33	708, 751(A)(6)	**We support implementation of a 9 psi RVP cap on all high ozone season (aka summer) gasoline and ethanol gasoline blends, and keeping E10 at 9 psi *including* its extra 1 psi RVP waiver under the Clean Air Act, (i.e., there should be no 10 psi RVP E10).** This should apply to fuels not otherwise covered by lower vapor pressure caps in place pursuant to CBG, or other SIP requirements. Such limiting of vapor pressure will help reduce ozone precursor and other emissions statewide not only from vehicles but other equipment and storage tanks.	A.R.S. 3-3491 states "From and after September 30 through March 31 of each year, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section by up to one

		p. 35, Therefore, we support striking the last phrase in Sec. 3-7-708 (B) (1) ("by more than 1 psi"), so this provision would now read: "A gasoline ethanol blend that meets the requirements in subsection B (1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814." We also support changing (B) (1) (b) (ii) to read: The fuel ethanol content of the gasoline ethanol blend shall: "Not exceed 9 psi, including any applicable waiver condition under Section 211(f) of the Clean Air Act." Also, (B) (2) should also disallow 10 psi RVP E10 or other gasoline ethanol blends in high ozone season outside the CBG area, *and* should not be making an exception for the month of April for CBG areas.	pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six percent ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by division rule." Additionally, 3-3491(D) contains requirements for lowering the RVP via removal of the 1 pound waiver.
34	708(B)(3)	Although the ASTM D4814 specification was updated to resolve some of the issues this section meant to address, there may still be an issue related to the TV/L=20 specification. Please review.	After review and discussion with stakeholders, it was determined that the removal exemption for TV/L=20 may be problematic. Therefore, to avoid issues, this will not be removed from rule.
35	718(A)	Not one state we blend biodiesel in requires that the retail blender has to report the total amount of biodiesel blended over the whole year or even any volumes at all. We believe this is over-burdensome on the retailer.	ARS 3-3433(M)(3) states the associate director shall adopt rules regarding registration and reporting requirements for producers, blenders and suppliers of biofuels and biofuel blends. Maintaining a registration and reporting requirement provides the agency with information regarding what sites need to be inspected for biofuel quality and compliance.
36	718(B)(1)	No other states have a requirement for the biodiesel blender to implement a QA/QC Program. We believe this is over-burdensome on the retailer.	ARS 3-3433(M)(5) states the associate director shall adopt rules for quality assurance and quality control programs. We believe that facilities producing, blending, and supplying biofuels, or

			other fuels, should have a program in place to ensure the quality of the fuel meets the standards. Our goal is to meet statutory requirements while alleviating unnecessary burdens on regulated entities. As such, we have removed the requirements detailing sample analysis and retention, but retained the requirement that a producer or blender shall evaluate the QA/QC program and make additional changes to bring the site into compliance if the department identifies fuel that does not meet ASTM standards.
37	718(B)(3)	We agree that all biodiesel producers we purchase product from must be EPA facility registered. However, not one state we blend biodiesel requires that the blender have a Sampling and Testing Program and retain samples for 30 days. We believe this is not necessary and over-burdensome on the retailer. We believe it is the supplier at the rack that is responsible to disclose biodiesel % in all diesel loads on the BOL/PTD. Retailers cannot test every diesel load being delivered to their store. We agree that testing of a tank that has been inactive for 30 days is necessary.	See comment above. We have retained the requirement to either test or assume the diesel contains 5% biodiesel for blending when the product transfer documentation states that the diesel fuel may contain up to 5% biodiesel.
38	718(C)	Title – delete "and testing methodologies" as they have not been described We agree with the Biofuel standards and testing methodologies. Just like all states we blend biodiesel, the diesel and biodiesel must meet ASTM specs (D975 & D6751). Blends higher than B5 must meet D7467.	We have deleted the testing methodologies from this section, as testing methodologies for motor fuels (including biofuels) are included under R3-7-715.
39	718(C)(2)(b)	Specify "percent by volume" b. A biodiesel blend containing more than five percent by volume but less than 20 percent by volume biodiesel by volume meets the requirements in ASTM D7467, and	Section deleted per comment above.
40	718(D)(1)(d) and (D)(2)(c)	Should be amended to read: "Any ... fuel sold...or dispensed was received from AND (*not or*) traceable to a person registered with the Department under subsection (A)(1) AND (*not or*) EPA under 40 CFR 80, subparts K or M. It is critical	Section clarified.

		to the auto industry that the supply chain be clearly documented at every stage. Therefore, the provisions in (D) should also be augmented to specify within this section that the owner or operator of motor fuel dispensing sites must maintain records documenting the registration status of their suppliers for a stated time period.	
41	718(E)	1. It is important for regulations to be written clearly to be able to identify and hold accountable all appropriate parties, in the event of quality issues for any type of motor fuel. Therefore, we support changing this proposal to require "biofuel producers, suppliers or blenders located *outside* of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier or blender located within Arizona" to <u>also</u> register, and ideally maintain records documenting which registered or other biofuel producers, suppliers or blenders they have supplied. In the alternative, at a minimum, State registered producers, suppliers, and blenders should have to document the identity and contact information for their unregistered out-of-state suppliers in reports to the Department under 7-718(A). 2. While 7-718 nominally applies to biofuels and biofuel blends, the rationale for the exemptions in (E)(2) for diesel and up to 5% biodiesel, (E)(3) for Biomass Diesel blends, and (E)(4) for "up to E10" gasoline is puzzling. The regulations should either cross reference in this provision where there are comparable provisions for registration, quality assurance, and retailer record keeping for these exempted fuels, or otherwise explicitly include them and broaden the scope of 7-718.	1. The Department holds accountable only the parties that are producing, blending, and supplying biofuels within Arizona. The QA/QC provisions require a biofuel producers and blenders to retain documentation regarding the traceability of the products used in the biofuel blend. Additionally, R 3-7-707 includes provisions for product transfer documentation for traceability purposes. 2. ARS 3-3433(M) only provides requirements and the authority to adopt registration, reporting, QA/QC requirements for biofuels and biofuel blends. By definition, this does not include gasoline meeting ASTM D4814 standards or diesel meeting ASTM D975 standards.

42	718(E)	R3-7-718 E. Exemptions. 1. A biofuel producer, biofuel supplier, or blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or blender located within Arizona is not required to register under subsection (A)(1)(a); 2. Diesel fuel containing five percent or less biodiesel is exempt from this Section if the following conditions are met: a. The diesel fuel meets the standards of ASTM D975; and b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975. 3. A biofuel producer, biofuel supplier, or blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section. According to FTC 16 CFR 306, Biomass-based diesel other than biodiesel (renewable hydrocarbon diesel) has labeling requirements, which mirror the biodiesel labeling requirements, only the labels are orange and black instead of blue and black. By changing the text in section R3-7-705 to start with all motor fuels shall meet the labeling requirements of 16 CFR 306, Arizona would be mirroring both FTC and NIST Handbook 130. 4. Gasoline containing up to 10 percent ethanol is exempt from this section.	Modified in R3-7-704 to include FTC labeling for motor fuels.
43	718(E)(2)	Specify "percent by volume" 2. Diesel fuel containing five percent by volume or less biodiesel is exempt from this Section if the following conditions are met: a. The diesel fuel meets the standards of ASTM D975; and	Clarified as suggested.
44	749	May already have ownership, so technically not accepting "Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party te custody of the Arizona CBG or AZRBOB to a transporter or other terminal.	Clarified as suggested.
45	751(A)(1)	Lower sulfur max to match EPA downstream cap of 95 ppm or 80 ppm cap for wintertime requirements.	Updated summer sulfur downstream limit to 95 ppm as suggested. Wintertime downstream limit is currently 80 ppm.
46	751(A)(1)-(3) 751(B)(1) and (2)	These values need to be updated to reflect federal requirements in the U.S. EPA Tier 3 Final Rule (see 79 Federal Register 23414, April 28, 2014). The "refinery annual average" sulfur limit for gasoline/blends is now 10 ppm; and at retail there is a not to exceed 95 ppm downstream cap (see Tier 3 for more details).	Clarified as suggested (see above).
47	751(B)(7)(a) and (b)	The provisions for CBG say in (a)(i) that the minimum oxygenate content is 10 percent fuel ethanol by volume in certain months; and in (b) the maximum oxygenate content is 4 percent by weight for fuel ethanol. It would be less confusing to just specify 10 percent by volume fuel ethanol is required (as both a min and max). If necessary, a parenthetical could be added that the maximum oxygen content not exceed 4 percent by weight and use a separate section to cover other oxygenates.	There are two standards that must be met: 1) 10% by volume ethanol; and 2) 4.0 percent by weight oxygen content. Due to density variation in gasoline blendstocks, the oxygen content of an oxygenated fuel may vary on a weight basis even though the volume percent

			remains fixed. ARS 3-3492 states that gasoline "....shall contain not less than ten percent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency." Therefore, the limits of 10% by volume ethanol and 4.0 percent by weight oxygen were established.
48	752(F)(3)(d)	Must they owners be registered suppliers?? Why not independent if owned by four or more entities??	R3-7-725(F)(3)(c)(i) allows the laboratory to be operated by entities other than a registered supplier.
49	752(F)(3)(e)	Add "upon notification by the department" at the end. If the Department has no knowledge of laboratory ineligibility under this clause, how is the registered supplier supposed to know??	The registered supplier should ensure that the laboratory has the necessary qualifications to perform the work required per the requirements through auditing, contracting, and/or other means.
50	752(F)(4)(d)	Add "retained in accordance with R3-7-752(F)(4)(b). Seems strange to have a Director request for a sample in the quarterly report section. Labs keep samples 45 days; suppliers keep samples 60 days. Samples in the report are up to 105 days old.	This section of the rule provides requirements that the registered supplier must ensure are met by their designated independent laboratory. Section (4)(b) requires retention of samples for at least 45 days unless the time is extended by the Director up to 180 days. Section (4)(d) requires the registered supplier to ensure the laboratory supplies a duplicate of the sample to the Director upon request. This request could come for a variety of reasons, and is not necessarily related to reporting.

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51	753(F)	Unnecessary to list communication avenues available. Delete "by fax."	Has been clarified that the notification may be done by fax or email.
52	755(C)	Note this section prohibits remediation of over and under oxygenated product at a motor fuel dispensing site or fleet vehicle fueling facility described in R3-7-710. Suggests adding #3 and #4: 3. Use as the hydrocarbon component of ethanol flex fuel. 4. Downgrade to conventional fuel or transmix	If the fuel is downgraded it would no longer be AZRBOB and these restrictions would no longer be applicable.
53	755(J)	Is this still necessary?	Yes, this is still applicable. The State Implementation Plan (SIP) submitted by ADEQ to EPA in August 2013 and supplemented in July 2014 has not been approved. This section and others in the rule have been clarified to indicate the dates of the SIP submittals.
54	757(A)(8)(b)	Serves no purpose, delete.	While this does not appear to provide great benefit, it also does not appear to provide harm.
55	757(A)(9)(a)	Needs clarification.	Modified as suggested.
56	757(F)	Suggest rewrite: As transferor or transferee, a ~~A~~ registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents involving every transaction of Arizona CBG or AZRBOB for 60 months. Documents for the current and previous month shall be maintained onsite. ~~for each shipment of Arizona CBG or AZRBOB transferred during the 60 months he most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.~~	We believe the current language is clear and remains unchanged.
57	757(G)	Ethanol is not a blend component of AZRBOB.	Clarified as suggested to remove the term "blend component."
58	759(E)	Delete if SIP approved	The Department is awaiting SIP approval. Language was clarified to denote when the SIP was submitted to clarify.

59	Table A	Why list benzene if uncontrolled? Is it because it is probably a requirements to pass a CARB predictive model? If so, is AZ claiming authority to regulate this toxic? EPA issues here.	Benzene is a parameter required for the predictive model and is included in Table A to identify the test method. There is no standard set for benzene.
60	760(D)	Do we have the same statement applicable for non-compliance survey fuels, or should this be stricken as an understood course of action.	Generally speaking, enforcement actions for a failure of a sample at retail would be taken for the retailer and/or the supplier, terminal or other party linked to the violation. This section provides authority for enforcement against the registered supplier.
61	760(F)(1) and (2)	Language should state from May 1 through September 15 as in other sections.	Modified per suggestion.
62	760(G)(2)	Aren't we looking for E200 and E300 during summer time compliance surveys?	When the rules were developed E200 and E300 were not defined in D86 and T50 and T90 were the parameters that EPA used.
63	761(C)(2)	Suggest adding #3: In situations where the noncompliance was discovered after beginning of transport in a pipeline, section 2(a) shall not apply. Delivery of the noncompliant fuel shall be coordinated through the Department to determine the applicability of section 2(b).	If a compliance issue is identified after a batch of AZRBOB is already in route via the pipeline, R3-7-731(C)(2) would apply. The transportation of the fuel would be ceased upon arrival at its destination and the situation would have to be remedied prior to further transport and sale of the AZRBOB or CBG.
64		Incorporate requirements for CNG and LNG passed by NCWM in July 2016.	We are updating the references for Handbook 44, 130, and 133 to the 2017 versions, which include the items passed by NCWM in July 2016. R3-7-302 requires that a person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130,

			except as otherwise stated in this Chapter.

DRAFT

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:52 PM
To: Roger Fisk
Attachments: APMA Comments 090514.pdf; CircleK Comments 090514.docx; StakeholderWorkshopNotice080614.pdf

Michelle Wilson
Associate Director
Department of Agriculture
Weights and Measures Services Division
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602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

ARIZONA PETROLEUM MARKETERS ASSOCIATION

September 5, 2014

Michelle Wilson
Director, Transportation Fuels and Air Quality Programs
Arizona Department of Weights and Measures
4425 West Olive Avenue, Suite 134
Glendale, AZ 85302

VIA EMAIL – mwilson@azdwm.gov

Dear Director Wilson,

I write on behalf of the Arizona Petroleum Marketers Association (APMA) regarding the August 6, 2014 Workshop on Stage II Vapor Recovery Decommissioning hosted by the Arizona Department of Weights and Measures (ADWM or the Department). During that session, ADWM outlined the upcoming rulemaking process for removal of Stage II systems, pursuant to HB2128. The Department proposed to have fueling stations remove stage II equipment during their assigned annual testing month, with the lower half of BMF numbers decommissioning in year one and the higher half of BMF numbers decommissioning in year two. Registered service representatives would inspect and certify the decommissioning process, with an ADWM representative present at a subsequent testing date, within 30 days from the decommissioning date.

While there will be a long term cost savings to station owners from no longer having to maintain and test Stage II equipment, the fact remains that there is an up front cost to removal, capping and replacement of system components. An unrelated major cost hitting station owners in 2015 (in store) and 2017 (at fueling dispensers) is the EMV liability shift and related equipment upgrades. For sites where credit card processing equipment cannot be upgraded to accommodate EMV, entire dispensers may be replaced, which may drive decision-making on when an owner would prefer to decommission stage II systems at that location.

Because of the costs and logistics involved with decommissioning, it is critical that station owners have the maximum flexibility in determining the timeline. APMA, through its Board of Directors, supports a modified approach to the Department's proposal for Stage II decommissioning. Specifically, APMA suggests that station owners should be permitted to submit a plan to ADWM to "swap" decommissioning months between their facilities. Single station owners should be permitted to submit a plan to ADWM if they want to decommission in a different month than their annual test month. For example, if the goal is to decommission roughly 1,000 stations in 24 months, then up to 45 facilities could decommission each month. The ADWM proposal would establish the default timeline for decommissioning, if an owner declines or neglects to submit a plan to the Department by a date certain or if their request to swap cannot be accommodated. This proposal would satisfy the Department's requirement that half of stations are decommissioned in each year, while allowing more flexibility to owners.

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tel 602-330-6762 • fax 602-391-2817 • amanda@APMA4u.org • www.APMA4u.org

ARIZONA PETROLEUM MARKETERS ASSOCIATION

With regard to stage I annual testing, APMA members have concerns that Stage I annual testing requirements should be modified in light of the removal of Stage II controls. It is my understanding that, outside of San Diego County and Arizona, the 10wci pressure tests methodologies (TP-91-1 and TP-96-1) are not used anywhere else in the country. Instead, even in 8-hour ozone nonattainment areas rated as serious, the TP-201.3 testing methodology is used. The 10wci pressure tests have several drawbacks: they require a minimum and recommended maximum ullage (often requiring a special delivery of fuel prior to testing), they require at minimum two hours of fuel dispensing shut down time on testing day and they pressurize the system far beyond when it normally should vent. APMA requests that the Department consider require the TP-96-1 test for the first test after decommissioning is complete and the first test for a new site only. For annual Stage I testing, APMA asks the Department to consider using the TP-201.3 test.

We greatly appreciate ADWM's dialogue with industry on these issues. APMA also welcomes the opportunity to provide input in ADWM's planning on this and other topics. As always, please feel free to contact APMA, through its Executive Director Amanda Gray at the contact information listed below, if any additional information is required.

Sincerely,

Jason Davis
President
Arizona Petroleum Marketers Association

cc: APMA Board of Directors

JD/atg

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tel 602-330-6762 • fax 602-391-2817 • amanda@APMA4u.org • www.APMA4u.org

Stage I Vapor Recovery System Testing In Area A

House Bill 2128 amended ARS 41-2132 subsection C.5 and prescribed installation of stage I vapor recovery systems which are tested annually in area A and other geographical areas as provided by subsection G of the section. The amendment required that stage I vapor recovery systems be tested by a registered service representative licensed by the department. The statute did not provide a method or standard for testing the stage I system but authorizes the ADWM in consultation with the Department of Environmental Quality and the States Fire Marshal to establish rule standards for installation and operation of stage I vapor recovery systems. Arizona Administrative Code Title 20 Chapter 2 Section R20-2-905.A.1-8, Initial Inspection and Testing, references two dynamic pressure performance tests for evaluating vapor systems. These tests are San Diego TP-96-1 and CARB TP-201.4 which is referenced for use in determining pressure decay rates for both stage I and stage II vapor recovery systems in area A. San Diego Air Pollution Control District Test Procedure, TP-96-1, is a static pressure leak test use to determine compliance for phase I and II vapor recovery systems and certified by the California Air Resource Board (ARB). TP-96-1 is currently used in area A for vapor recovery compliance testing on both stage I and stage II vapor recovery systems. ADWM has proposed the use of TP-96-1 for evaluating vapor leaks for stage I vapor recovery systems after decommissioning of the stage II vapor recovery system. This test method has an allowable leak rate of 0.5 gallons/minute at 9.5 inches wcg which was originally developed by California State Fire Marshal to ensure that any leaks at ground level at operating pressures would dissipate before becoming a fire hazard. The use of five-inch wcg or a two inch wcg test was also used to certify vapor systems and their components and performed with the same effectiveness as the ARB certification test systems with regard to vapor leakage.

A review of vapor recovery systems test methods in current nonattainment counties, with the exception of California, which were classified as serious for 8-hour ozone standards found that each of these areas used TP-201.3 as the required testing. A search of vapor tightness test methods used in most nonattainment areas shows that TP-201.3 or similar 2.5 wcg testing are required and San Diego County Control District is the only district which uses TP-96-1. This test methodology is used for both stage I and stage II vapor recovery systems and only requires two-inch wcg for evaluating vapor tightness. This test procedure is used because it measures the limits of the pressure vent values which are set to relief vapor pressure at 3.5 wcg. TP-96-1 requires 9.5 wcg which was used to test the stage II vapor system equipment by ADWM. Current stage I vapor systems will only be required to test the gasket on the drop tube, spill buckets and vapor break.

RECOMMENDATIONS SUMMARY:

Allow each owner of a gasoline dispensing facilitie(s) to schedule stage II vapor recovery decommissioning. This would allow for equipment and resource allocation over the two year decommissioning period. The decommissioning process would include testing the system using TP-96-1 with a registered service representative certifying the decommissioning process. The schedule would be submitted to ADWM for review and approval.

Michelle Wilson
Director, Transportation Fuels and Air Quality Programs
Arizona Department of Weights and Measures

In response to the recent changes in Arizona Revised Statute (ARS) 41-2132 subsections A-F and ARS 41-2135 subsection A-H and recommended stage II vapor decommissioning schedule by the Department of Weights and Measures (ADWM) as prescribed by ARS 41-2315 subsection H, the following recommendations are submitted for consideration.

Stage II Vapor Recovery System Decommissioning

ADWM has recommended that decommissioning of Stage II Vapor Recovery systems in Area A and other geographical areas be performed based on the BMF number assigned to the location. According to ADWM proposed schedule for decommissioning, locations with lower BMF numbers would be scheduled first and higher BMF numbers would be scheduled last. This schedule would occur over a two year period starting October 1, 2016 and ending September 30, 2018. This would require that all locations assigned a BMF number be scheduled over the two year period lower number in the first year and higher numbers in the second year.

This type of schedule would place an undue finance burden on companies which have large site counts and a diverse portfolio of sites built over a twenty or thirty year period inside Area A. It was typical for sites built in the 70's and 80's to have a lower dispenser counts than those built in the last 10 years. These older lower dispenser count sites have much lower fuel though-puts than newer larger dispenser count sites. The decommissioning process would take much longer on the larger sites resulting in longer down time thus affecting the site economics to a greater extent. The decommissioning process will require that all dispensers be disconnected from the stage II vapor system and all hanging hardware be replaced. The cost for decommissioning stage II vapor recovery at a dispenser which is multi hosed is estimated to be $1,750 and those with a single hose is estimated to cost $750. This does not include the cost of testing and decommissioning the stage II vapor system which is estimated to be $550 per site.

We recommend that each dispensing site owner develop a schedule for decommissioning and plan submission based on equipment and resource availability. These plans would be submitted to ADWM for review and approval. We also recommend that a registered service representative inspect and certify the decommissioning process based on the standards established by ADWM, Arizona Department of Environmental Quality and the State Fire Marshal. This would eliminate the need for ADWM to directly witnessing all the stage II vapor recovery decommissioning and provide for an effective transition for removal of stage II systems in Area A and other geographic locations having stage II vapor recovery systems.

RECOMMENDATIONS SUMMARY (cont.):

Static vapor pressure testing on stage I vapor recovery systems would be performed on an annual basis using TP 201.3 by a registered service representative. This annual test would be scheduled with ADWM as an unwitnessed test. All new to industry sites would be required to perform a static vapor pressure test in compliance with testing method TP-96-1 at initial start-up.

Ron Gilley
Director of Fuels
Circle K Stores, Inc.

ARIZONA DEPARTMENT OF WEIGHTS AND MEASURES (AZDWM)

STAKEHOLDER WORKSHOP

FOR

STAGE I AND STAGE II PROPOSED VAPOR RECOVERY RULES

The Arizona Department of Weights and Measures (AZDWM) will hold a stakeholder workshop to discuss proposed rules for decommissioning Stage II Vapor Recovery and implementation of rules for Stage I vapor recovery equipment as required by HB2128, effective April 22, 2014.

The stakeholder meeting will be held:

1:00 p.m. to 4:00 p.m., Wednesday, August 6, 2014
Arizona Department of Weights and Measures
4425 W. Olive Ave., Ste. 134
Glendale, AZ 85302

The workshop will be webcast. In order to join the webcast, follow the instructions below:

1. Join the meeting by clicking the following link:
https://global.gotomeeting.com/meeting/join/557379557

2. Use your microphone and speakers (VoIP) - a headset is recommended. Or, call in using your telephone.

United States: (312) 757-3131
Access Code: 557-379-557
Audio PIN: Shown after joining the meeting

Meeting ID: 557-379-557

If you are interested in receiving updates, future announcements and materials about the Arizona Stage II Vapor Recovery Program and associated activities, contact Michelle Wilson, Director, Transportation Fuels and Air Quality Programs, ADWM, by email at mwilson@azdwm.gov, or by telephone at (602) 771-4933.

Persons with disabilities may request a reasonable accommodation, such as sign language interpreter, by contacting Liz Atkinson at 602-771-4927. Requests should be made as early as possible to allow time to arrange the accommodation.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:57 PM
To: Roger Fisk
Attachments: Notes_BiofuelWorkshop112114.docx; StakeholderWorkshopNotice112114.doc

Michelle Wilson
Associate Director
Department of Agriculture
Weights and Measures Services Division
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602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

Review of Draft Proposed Rule Revision for Biofuels and General Fuel

- In office attendees:

Amanda Gray
Mark Everly
Nicole Smith
Tom White
Matt - Chevron

- On the Phone Attendees:

Russ – Kinder Morgan
Marilyn Hermann
Susie Stevens Stevens& Stevens representing WSPA
Stacy Hopkins exxon mobil
Adam Spexarth – Flint Hills Resources
Dan Reiss - REV Biodeisel
Julie - Noble Americas

* Introduction by Michelle about the purpose of the meeting to amned rules for Biofuels

PG4, Item 13

Page	Item	Purpose
4	13	Remove antiquated handbook
4	13-New	Update handbooks to 2015
5	14	Update handbooks to 2015
6	104.f.2	Added sentence to clear up seizing authority of the department
9	104.m.8	Clarified M7C
9	104.m.9.a	Added up to
21	602.2.a	Removed triplicate requirement
	605	Removed outdated CARB incorporation by reference
24	701	Deleting biodiesel (mono alkyl ester) definitions Discussed the two comments received about keeping with biodeisel Mark: wants to know if this includes renewable biodiesel. Michelle discussed the ASTM lack of definitions and no need for it. Mark brought up the fact that there has a historic push on this and it is gaining ground in CA. Matt: Renewable fully fits in D-975 without any specifications changes. Mark: I wasn't looking at the specifications but more of the retailer making claims about "premium" diesel. Michelle: Until there is something in the rule that would clarify it would be against our regulations to market it that way. SM: Well lets fix it.

		Mark: If there are people out there that want to market it, then it is the time to add it in. Matt: If there is a want to market it, then there needs to be a way to prove it. With the refineries we are looking at it for the credits, and with states that have a refinery it is very important to quantify that information. If it is going to be marketed in Arizona, then it is important to have accountability in the PTDs, Bill of lading. MW: Does anyone want it in there? Mark: Without the renewable biodiesel definition I don't see the need for the biodiesel definition. MW: If those of you have an issue with this, now is the time to bring this up. Since there is nothing in the rule to substantiate this, it would be taken off sale without an addition to the rule.
24	Biofuel Definition	Changed to match statute Mark: Should have *blend component* to the heating or power *or as a blended component.* Dan: When you are talking about the statutory side, it have it recognized as a fuel for the tax statute federally certified alternative fuels definition. Biodiesel is treated differently. MW: I don't know as we aren't the agency that regulates that . A change of E85 to flex fuel is easier and adding is out of our jurisdiction. Dan: It isn't fair that biodiesel in included in the definition and if you are changing it anyway. MW: Can you send me the statute you are talking about with red-lines so I can be really clear on this and work with you. Dan: Will get that over to you right away. Mark: Does the reference to the clean air act do anything to what Dan is asking about. Dan: Tax exemption side MW: This isn't a statute that we normally deal with.
24	Biofuel Blend	Changing it to match statute SM: Statutorally, Mark, are there things you would want to see Mark: In AZ, there are only two that we see. I crafted a definition based on those two that would allow addition of others. MW: how bad is your heartburn on this definition as it is difficult to change the statute. Mark: Not that bad
24	Biofuel Blender	Mark: Remove the "s" on bio-fuels Nicole: *a biofuel-blending*
24	Biomass	Match statute
	BQ9000	Removed MW: QA/QC requirements are changing thus rendering this obsolete. Whispa was going to check with the individual making the commnets. Susie: I will follow up with Mark: We are the only distributing in the region Matt: Maybe the definition
	Biodiesel blend	Whispa has recommended the deletion of a sentance.

		MW: any issue with deleting this. *No Comments*
	E-85	Deleting to update to ASTM standard Flex Fuel
	Flex Fuel	ASTM standards Nicole: Change specifications to requirements Mark: The point is 5798 is a requirement MW: I was trying to stay consistent. Does anyone have any comments and I will go through and update all for consistency.
	Gasoline Def.	Nicole: Should the E85 be changed to Flex Fuel in this as well? MW: Yes, thank you.
	Motor Fuel Def.	Nicole: Should the E85 be changed to Flex Fuel in this as well? MW: Yes, thank you. MW: I will search for those and get those out. Mark: Should electricity be added to the statute as a 'motor fuel'. MW: I don't want to change the definition of motor fuel but I have received requests to have labeling requirements in handbook 130. I am trying to incorporate labeling requirements. I am hesitant to add it to motor fuel as the domino effect is massive. Mark: Why would someone want that in there, are they trying to sell at a re-charging station? MW: I think it is because there are new vehicle 'fuels' and NCWM has adopted the standards. I am working on adopting NCWM standards to keep up with the rest of the nation and you will see that throughout.
	Pressurant Def.	Not needed anymore.
	Producer Def.	Blender not needed anymore and being removed from this as it has its own definition now.
	Materials incorporated by reference	Updating
	D49 Reference	Using the 2009, should update to more current Mark: There could be an issue with volatility that Nicole has found. There is a difference in the sulphur that we are unsure what impact that would have. MW: I don't think that would make a big difference in the program but I would like to hear from industry. Matt: I will look into that and let you know. MW: There is another issue that might tie into this that I will get to in a minute. I would like to stick to ASTM and get rid of the deviations. Nicole: With all of the updates you are making, there are more current versions and before running with this we should check and make sure they are the most current with ASTM citations.
27	ASTM D7794	Added this in to spark discussion. Spoke to EPA and they said it is gray area. Mark: The only reason I see is it being a blended pump. MW: Deleting it as it requires more work than anyone is interested.
	SAEJ285	Incorporated by reference
	704.A.7 704.B	Premium diesel addition Mark: Nothing against premium diesel. My issue with B. is that the claim must meet the handbook 130 requirements. If you are competing against diesel fuel it needs to be documentation. Testing to go along with HB130

		requirements might be expensive for the agency to consider. MW: Biofuels are also expensive to test but fortunately there hasn't been a large call for it. Mark: If it is going to be inserted in here, as a consumer there needs to be documentation MW: Lets talk about it as we go trough
	705	Trying to reorganize the rule to compile labeling requirements for dispensers. Changing the title MW: Cleaned up the requirements to comply with HB44 and meet NCWM standards. Ran into a discrepancy to make sure consistent. MW: Section C is moved from 709 Section E is copied from HB 130 (2015 publish date). Once published will refer to HB
	707.A.10 707.A.9	Mark: It seems that it should be better documented than just a piece of paper? MW: Isn't normal diesel just a PTD anyone? Mark: There is certification from Phone: 707.A.9 question MW: Our statutes have a requirement, if it is under 5% or less of bio-diesel it has to be stated. 41-2083M
	708	Nicole: Looks like is encompassing oxygenate blends. A change in the title would make it encompass everything discussed. Mark: It is open to ethanol blends and other oxygenated blends.
31	708?	Update to ASTM Standards (antiquated based on today's standards)
	711	To make consistent with 708 change the title to Gasoline Alcohol blend MW: I will take a look at that but it sounds fine
	713	To update to and clarify
	714	Updating Mark: are those ATI values are not consistent with section 704 Mark: I have a note on Premium Diesel: Nicole: In 714, there is no mention of biofuels at all. I know there are is a section that covers this but there should be a reference MW: I will make an adjustment
	715	Matt: the certifications need to be done by someone with credentials. MW: D is there because we have seen blending has been done at the station and we have cited for this. We think that this is happening without the stations knowledge. Maybe this applies to the premium diesel as well. Mark: This doesn't make any sense MW: We see it from outside of the state (CO, TX, NV) with sprinkling throughout the state. Everyone throughout the chain should be responsible not just the station. AG: Can you explain this to me again. MW: 16 CFR 306 states that you can calculate out what the blend end result is but there are federal requirements. MW: I don't know if premium diesel is along the same lines. Mark: Maybe 'provide certification'

		MW: Instead of spending a lot of time of this, I will think about it and see if we can figure out a way that everyone can comment on the proposed rule. Mark: Should electricity be added as section F with a reference to HB130
	717	Changing the title and incorporating HB130 requirements AG/Mark: Comments on consistency and typos
	718	Added biofuel blenders MW: People in the biofuel supply chain be registered MW: QA/QC requirements: Discussed in our last workshop, and tried to include generalities Mark: Is the producer of the biofuel covered by the definition as biofuel alone is not a motor-fuel? MW: We can add biofuel and biofuel blend component to clarify. *adding in biodiesel (mono alkyl ester)* Mark: Is this begging for a change to the producer def.? MW: That is a CBG definition Mark: C.vi. deviate from biofuel to biodiesel MW: Cleaning that up would clear up confusion Mark: It seems that is wanting to be broken up into two different sections MW: I was trying to keep it all in one section to avoid having to go into different sections when looking at this. Maybe a section D for specifics on Biodiesel? A. should be producers, blenders, and supplies B. was supposed to be "other" requirements (like retailers) and refer back to 705 to the labeling requirements. 2. Would be more for producer should go back into A. and the title would be dispensing for retail. MW: Lets focus on the content of it and I can try and break it down for the different groups if we can agree on the content with difference sections. I will send it out for comments later. Mark: c.ii: the certificates of analyssis for the biofuel blend components, we don't receive the CofA biodiesel. We can get the pipeline documents MW: I was meaning the biofuel components; maybe change to the biofuel portion of the blend component Matt: That could be a headache for the terminals Mark: C.iv: MW: We want to make sure you are sure with what you are staring out with if you are doing a blend. You are anaylzing it our have a contractual agreement. Mark: We do it, but for a smaller party it might be an issue. MW: in the workshops, we had talked about prohibiting splash blending of biodiesel and diesel in a tank and no one commented on it. Mark: I am curious if smaller operators test prior to blending MW: I am not sure if it is unreasonable request. You could end up with a lot higher of a B20. Mark: Not for us as we analyze prior Dan: The indsutry standard for B20 blends, tankers arrive with 80% and then blended in the tanker truck which has shown to be a homogenous method. I

		can see at an underground tank where you wouldn't get a homogenous blend. Tankers are required to come with the B20 blend federally. MW: I agree with you on that. MY issue is with separate tanks an splash blend. I am going to include that you are not allowed to splash blend at a retail location with a prohibition on the sale of B100 since it is a blend component. Dan: I disagree with that as there are some locations that do sell B99.999 (federally required) as consumers do buy B99. Many newer engines are compatible with running biodiesel and can be run straight. Mark: I understand there are those individuals, but when you look at the specifications it is a blend component not a motor fuel. By definition. MW: I agree with you mark, when you look at ASTM it agrees with your statements. In reality, as the rules stand, we could not allow it to be sold at retail as the ASTM standard set-up. It needs to be more clear though as Dan has pointed out, it is being sold at retail. If we do allow it, there has to be consumer protection warnings which I am not aware of as it is not a motor fuel. I wanted to have more discussion about that. We as a department we will discuss this further. Amanda, do any of your constituents sell this. Dan: It is always taxed as a regular fuel. Amanda: I will get more information and get back to you. MW: if it isn't prohibited, then there has to be consumer protection to understand that it could be voiding their warranty. Matt: ASTM has to have those discussion about what needs to have warning about use. Dan: We have never heard of a prohibiting of anything B20 higher blends. Many stations put in blending pumps to allow B20, B50, B99. Europe has been using straight biodiesel for a lot longer than the US. MW: Are you aware of any consumer warnings Dan: Federally there are specific guidelines and labeling with support with this being made available to the public. MW: Could you get me the federal rules discussing this. If we don't prohibit this then there needs to be specific labeling. Dan: E85 pumps, what consumer warnings are there? Matt: They are not required as there are specifications. Dan: I like the E85 labeling with consumer awareness. MW: To not hold up progress, if Dan can get me information from the feds and Amanda, get with your constituents. I will also check with the national biodiesel board. Nicole: C.iii: Clarification MW: Let me give you some scenarios: tank doesn't meet specifications and the poor person can't figure out what went wrong. I am sure that we can re-word this to get where we need to be with your instance (Mark) and others to meet the needs (batch process or non-batch process). MW:d: all records have to be maintained for 5 years. Section 4: add "or biofuel blends" MW: I will work on getting this reformatted Matt: Are you aware of any existing yellow grip guards?

		Amanda/MW: I don't know and I haven't seen it used. SM: there hasn't been a color code in AZ for quite some time MW: If our guys see yellow grip guards then our staff can hand out a flyer to educate. Mark: The reasoning of putting the 7lbs and 9lbs MW: When you are lowering the amount of gasoline and to match the CBT Mark: We have done some testing on this and in the shoulder season and blending down. My note is to look into this further. MW: Let me make sure the dates match the seasons. Adam: Diesel fuel containing up to 5%, clarification on this with the QA/QC MW: That is a good point and needs clarification. I will include the language to include D5 and D975 is exempt from QA/QC
	719	Update
	720	Incorporate requirements
General Comments		
	Matt:	Can we get a clean copy to read over to ensure that there are no gaps with the red-line taken out to see the movement of text, etc.
	MW:	I will go back and put in the changes (do we need one more meeting to go over those? If you think we need a meeting, you can tell me?) I will send out the changes and if I get a ton of changes I will organize another meeting. I will also have another workshop to go over stage II. After that, I will send out the complete rule to both groups for a final review.
	Mark:	Page 27, 702.b.: is that applicable? MW: Yes, that is CBG requirement for SIP revisions that is being reviewed
	Mark:	As these rules go, when do you estimate these rules being in place MW: Yes, the end of next year. Mark: my only concern is the new ethanol flex fuel and product codes, there is a lot to be done at the terminal level. I am curious to the marketing plan for that . MW: Yes, there will be new labeling but I am not aware of their new marketing plan. Mark:

ARIZONA DEPARTMENT OF WEIGHTS AND MEASURES (AZDWM)

STAKEHOLDER WORKSHOP

FOR
REVIEW OF DRAFT PROPOSED RULE REVISIONS FOR
A.R.S. TITLE 20 RELATED TO BIOFUELS AND GENERAL FUEL PROVISIONS

The Arizona Department of Weights and Measures (AZDWM) will hold a stakeholder workshop to discuss draft proposed revisions to the biofuels rules contained in Arizona Administrative Code (A.A.C.) R20-2-718. These rules include requirements for producers, blenders, suppliers, and motor fuel dispensing facilities for the production, blending, distribution, and sale of biofuels. Additionally, the Department is proposing revisions to update other portions of A.A.C. Title 20, Chapter 2 related to Motor Fuels and Petroleum Products. The purpose of the workshop is to review and discuss the draft rules.

The stakeholder meeting will be held:

Friday, November 21, 2014, 9:00 a.m.
Arizona Department of Weights and Measures
4425 W. Olive Ave., Ste. 134
Glendale, AZ 85302

The workshop will be webcast. In order to join the webcast follow the instructions below:

1. Join the meeting by clicking the following link:
https://stateofarizona.centurylinkccc.com/CenturylinkWeb/OfficeManager

2. Call in phone number:

United States: 1-720-279-0026
Access Code: 670597

If you are interested in receiving updates, future announcements and materials about the Arizona Biofuels Program, contact Michelle Wilson, Director, Transportation Fuels and Air Quality Programs, AZDWM, by email at mwilson@azdwm.gov, or by telephone at (602) 771-4933.

Persons with disabilities may request a reasonable accommodation, such as sign language interpreter, by contacting Liz Atkinson at 602-771-4927. Requests should be made as early as possible to allow time to arrange the accommodation.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:41 PM
To: Roger Fisk
Subject: FW: GGE and DGE question

-----Original Message-----
From: Rebecca Hudson-Nunez [mailto:Rebecca.HudsonNunez@swgas.com]
Sent: Thursday, December 15, 2016 5:09 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: RE: GGE and DGE question

That all sounds great! Thank you Michelle!

Rebecca Hudson-Nuñez | Administrator, Public Affairs

PO Box 52075 | 42A-255 | Phoenix, AZ 85072-2075 direct 602.395.4085 | mobile 602.499.1615
Rebecca.HudsonNunez@swgas.com | www.swgas.com

-----Original Message-----
From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Thursday, December 15, 2016 5:03 PM
To: Rebecca Hudson-Nunez <Rebecca.HudsonNunez@swgas.com>
Cc: Sherrie Merrow <smerrow@ngvamerica.org>; Joe Varela <joe.varela@swgas.com>
Subject: EXTERNAL: RE: GGE and DGE question

I apologize, I started this email a couple days ago and got side tracked....

I do not believe this is something we need to have legislation to implement, as it can be incorporated into our rules. I am still working to draft the proposed rule and hope to hold a workshop in January. We will be updating our references for Handbook 44, 130, and 133 to the 2017 version, which will include the information you are requesting. Without a final review, my initial thought is then incorporating some language into R3-7-705 (R20-2-705) regarding dispenser labeling referencing Handbook 130 for CNG and LNG. I have added your name to my distribution list to make sure you are alerted of the workshop.

I sent a draft rule to you in August; however, I have made quite a few changes since then. Let me take a shot at some language to send your way and see if you are OK with it. Otherwise, feel free to take a stab at sending something my way. I am also happy to meet to discuss if needed.

Thanks,

Michelle Wilson
Associate Director
Department of Agriculture
Weights and Measures Services Division

1688 W. Adams Street, Phoenix, AZ 85007-2606
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

-----Original Message-----
From: Rebecca Hudson-Nunez [mailto:Rebecca.HudsonNunez@swgas.com]
Sent: Tuesday, December 13, 2016 11:29 AM
To: Michelle Wilson <mwilson@azda.gov>
Cc: Sherrie Merrow <smerrow@ngvamerica.org>; Joe Varela <joe.varela@swgas.com>
Subject: GGE and DGE question

Hello Michelle -

I hope you are having a great holiday season!

I wanted to check in with you on a question I have about the CNG and LNG GGE and DGE.

I know that the National Conference of Weights and Measure adopted the DGE definition this summer, which we were very excited to see (already had CNG).

I was wondering if could tell me if there needs to be any legislation done in AZ to align with this or is there just an administrative path.

We need to make sure we have the CNG and LNG GGE/DGE for method of sale and for tax purposes.

Cheers,
Rebecca Hudson-Nuñez
Public Affairs
Southwest Gas Corp.
602-499-1615
Rebecca.HudsonNunez@swgas.com

Sent from my iPhone
****
****

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Thank you for your cooperation.

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Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:45 PM
To: Roger Fisk
Subject: FW: Ethanol Flex Fuel

From: Mark Ellery [mailto:mark@caljet.com]
Sent: Friday, December 09, 2016 9:11 AM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Ethanol Flex Fuel

Michelle,

Years ago, during rulemaking, Mike Ingram of Chevron and I went round and round about E85. He insisted that CBG be used as the hydrocarbon component of the blend, and that a third blend component be added, a "pressurant", in order to bring the final vapor pressure "up" to the minimum required by ASTM D5798. Knowing that to add the necessary infrastructure for a third blend component would not fly with the vast majority of those who blend the fuel, I fought to simply use "Conventional Gasoline", which has sufficiently higher vapor pressure to meet the minimum vapor pressure of the final blend, as the hydrocarbon component. Additionally, I argued that the "pressurant", which is itself a "hydrocarbon component" nullifies the argument to make "CBG" as the "hydrocarbon component" of the final blend, and I also added that the "denaturant" added to the ethanol is also a "hydrocarbon component".....all meaning, that anyway you cut it, the hydrocarbon component of E85, done Chevron's way, ain't CBG; it is a mixture of CBG, a pressurant and a denaturant.

To make a long story short, Duane sided with Mike, and the rule went forward as Chevron wanted, not with the common sense approach that I argued for. Subsequent discussions of the issue resulted in communication with EPA who insisted on CBG as the "hydrocarbon component". Nobody seemed to understand that it made no sense, and that by doing this you essential eliminate the E85 in the marketplace within Maricopa County, because no one was going to invest in the needed infrastructure to blend a "pressurant" for such a small volume product. We kept blending it as E85 without a pressurant only because Duane had no issue with it.

The new ASTM D5798 specification changed everything, allowing us to meet the minimum vapor pressure by reducing the ethanol content. So, in order to make an on-spec product, that's is what we have done.

So, that all said, and while the rule is open, is there any way on earth that you could at least call EPA and try to explain this to them once more?

We can easily make Ethanol Flex Fuel with 83% ethanol if we use conventional gasoline as the hydrocarbon component.....and everyone would be happy!

Just a thought....

More later.

Mark

Mark V. Ellery

Manager, Quality Assurance and Research

The Jet Companies
5601 W. Van Buren Street
Phoenix, Arizona 85043 U.S.A.

Office: 602-272-5522, Ext. 113
Mobile: 602-663-3760
Email: mark@caljet.com

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 4:44 PM
To: Roger Fisk
Subject: FW: Looking for Input on Rules

From: Hepp, Elizabeth [mailto:Beth.Hepp@valero.com]
Sent: Thursday, November 10, 2016 11:58 AM
To: Michelle Wilson <mwilson@azda.gov>
Cc: Snodgrass, John <John.Snodgrass@valero.com>; Henderson, Chris <Chris.Henderson@valero.com>; Hodges, Matt <Matthew.Hodges@valero.com>
Subject: RE: Looking for Input on Rules

Good afternoon, Michelle.

Thank you again for your time this morning to discuss the proposed language changes to section R20-2-708(B)(3)(a)(ii) and (b)(ii) concerning the T V/L waiver for gasoline blended with ethanol. As John stated on the call, the most recent ASTM D4814 Gasoline Specification does not contain an exemption for E10 finished gasoline V/L specifications. While the T V/L specification is important to older model engines, the modern fuel injected engine is not sensitive to T V/L. Retaining the waiver in the Arizona statute will not impact emissions or vehicle performance, however, it does give producers flexibility to blend gasoline which meets the AZ specifications. Without the T V/L waiver, we will be able to produce less gasoline meeting the AZ specification particularly blending summer grade CGB for Phoenix.

Chris, John, and I are available if you have any additional questions.

Have a great day.

Regards,
Beth

From: Tom Umenhofer [mailto:tom@wspa.org]
Sent: Monday, November 07, 2016 7:06 PM
To: Braeutigam, John <John.Braeutigam@valero.com>; Hepp, Elizabeth <Beth.Hepp@valero.com>
Subject: FW: Looking for Input on Rules

Hi John and Elizabeth,

Does the note from Michelle Wilson below resolve the issue? Other WSPA members appear to think so.

If not, then what is our concern? I would like to report back to the Committee and the State soon.

Tom

Thomas A. Umenhofer, CCM, REPA
Vice President

Western States Petroleum Association
(805) 701-9142
tom@wspa.org

From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Friday, November 04, 2016 7:54 AM
To: Tom Umenhofer
Subject: RE: Looking for Input on Rules

We will be updating to the latest ASTM D4814 standard when we update our rule. That is why the thought was that this language would no longer be necessary; however, I have received comment that it might still be necessary even with the latest ASTM standard. That is why I was reaching out to others for input.

From: Tom Umenhofer [mailto:tom@wspa.org]
Sent: Thursday, November 03, 2016 5:49 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: RE: Looking for Input on Rules

Hi Michelle,

I have been getting some mixed response to this item. It appears from the edits (in yellow) you provided below that the latest version of ASTM D-4814 is not referenced. Thus, the V/L ratio for ethanol language is still needed.

Am I reading this wrong? You do note the newer ASTM in your e-mail.

Tom

Thomas A. Umenhofer, CCM, REPA
Vice President
Western States Petroleum Association
(805) 701-9142
tom@wspa.org
tom@wspa.org

From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Monday, September 26, 2016 12:44 PM

We had been proposing to delete the following language from our rules because the input received indicated that these issues were resolved with newer ASTM standards in effect. I recently received a comment that the T V/L = 20 standard may still be an issue. I was hoping to get some feedback from others whether or not this is an issue or if this is indeed resolved with the current ASTM standards. This only applies to conventional gasoline.

R20-2-708(B)(3) ((Proposed for deletion)):

5. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
   a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.
   b. The finished blend complies with the standards in ASTM D4814; or
   c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.

Michelle Wilson
Associate Director
Department of Agriculture
Weights and Measures Services Division
1688 W. Adams Street, Phoenix, AZ 85007-2606
602-771-4933

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Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:46 PM
To: Roger Fisk
Subject: FW: Draft Rules
Attachments: Section 708 Revision.docx

From: Mark Ellery [mailto:mark@caljet.com]
Sent: Thursday, September 22, 2016 1:47 PM
To: Michelle Wilson <mwilson@azda.gov>
Cc: Nicole Smith <nsmith@caljet.com>
Subject: Draft Rules

Michelle,

Nicole and I got around to reviewing, again, the proposed rule changes which you forwarded to stakeholders back in July, in advance of our meeting, and found something that concerns me regarding sub section 708 B 3. The sub section was completely stricken.

I recall working on this sub section many years ago, with Mike Ingram of Chevron leading the charge. At the time, Mike, to me, seemed to be really getting into the weeds with the language. But, we were not blending ethanol into gasoline in the summer, back then, and as refiners were formulating "base fuel" that may or may not be blended with ethanol, concerns were raised about T50 and T V/L=20.

Even though many years have passed, I can see what Mike was thinking; and, as the sub section provides flexibility, I believe there is good reason to keep it in here, although it certainly can be cleaned up quite a bit.

While ethanol blending is pervasive these days, and mandated only in Arizona CBG in the Winter, the fact is that there may come a time when ethanol blending goes away in certain areas, or comes and goes in other areas. We just do not know.
As the most recent ASTM D4814 specification has cleared up one of the issues that Mike was concerned about back in the day, the issue of gasoline ethanol blends meeting the T50 minimum (which at the time was 170 F), I believe that the T V/L=20 is still a touchy subject today.

That all said, what we have done is to generate some proposed language for incorporation (See attached) that I think really cleans the sub section up regarding the need to meet ASTM D4814, while retaining the flexibility regarding T V/L=20.

Let me know if you have any questions....I would be happy to discuss.

Best regards,

Mark

Mark V. Ellery
Manager, Quality Assurance and Research

The Jet Companies
5601 W. Van Buren Street
Phoenix, Arizona 85043 U.S.A.

Office: 602-272-5522, Ext. 113
Mobile: 602-663-3760
Email: mark@caljet.com

R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § ~~41-2122~~ 3-3491. The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates.

B. Special provisions for gasoline ethanol blends.

1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
   a. The gasoline ethanol blend shall contain fuel ethanol. The concentration of the fuel ethanol, excluding the required denaturing agent, shall be:
      i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
   b. The fuel ethanol content of the gasoline ethanol blend shall:
      i. Be determined using the appropriate test method listed in ASTM D4814, and
      ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. Gasoline ETHANOL BLENDS ~~blended with~~ CONTAINING no more than 10 percent by volume of fuel ethanol shall ~~be blended using one of the following alternatives:~~ COMPLY WITH THE REQUIREMENTS OF ASTM D4814, EXCEPT THE MINIMUM TEST TEMPERATURE AT WHICH THE VAPOR/LIQUID RATIO EQUALS 20 IS WAIVED.
   ~~a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      ~~ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;~~
   ~~b. The finished blend complies with the standards in ASTM D4814; or~~
   ~~c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      ~~ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived.~~

~~4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.~~

C. In addition to complying with the requirements in ~~R20-2-707~~ R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:39 PM
To: Roger Fisk
Subject: FW: Comments on Proposed Changes to Article 7, Motor Fuels from Alliance of Automobile Manufacturers
Attachments: 160808 Alliance Final Comments to Arizona .doc

From: Valerie Ughetta [mailto:VUghetta@autoalliance.org]
Sent: Monday, August 08, 2016 1:41 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Comments on Proposed Changes to Article 7, Motor Fuels from Alliance of Automobile Manufacturers

Good Afternoon Michelle,
Attached please find our 5 page comments. Thank you so for much for accepting them for consideration. Please let me know if you have another workshop, or if you need further information. Please also let me know if you need a signed copy for your files (which i can scan tomorrow when I return to the office, or also send by snail mail).

Best Regards, Val

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August 8, 2016 (By email)
Attention: Michelle Wilson
Environmental Program Manager,
Arizona Department of Weights and Measures
mwilson@azda.gov, 602-771-4933

Re: Arizona Department of Agriculture Proposed Changes to Article 7, Motor Fuels

Dear Ms. Wilson:

The Alliance appreciates the opportunity to comment on the proposed changes to the Arizona Administrative Code (AAC), to be re-codified as Department of Agriculture Title 3, Chapter 7, Article 7, pertaining to Motor Fuels and Petroleum Products, as presented at the Public Workshop on July 8, 2016 in Phoenix. The Alliance is the leading advocacy group for the auto industry, representing 77% of all car and light duty truck sales in the United States, including the BMW Group, Fiat Chrysler Automobiles, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche, Toyota, Volkswagen Group of America and Volvo Car USA.

It is important to all automakers that motor fuels sold in the State of Arizona (and elsewhere) meet consistent, high quality fuel standards, given the crucial role they play in helping vehicles achieve increasingly stringent new emissions limits, as well as optimal fuel economy, and Greenhouse Gas (GHG) reductions. Vehicles and fuels act as a system. It is equally important that fuels be conveyed subject to quality assurance and accurate transfer documentation, and that the State assure sufficient retail dispenser labeling to inform consumers about the products offered. This is especially needed with the proliferation of alternative and biofuel choices, to remind consumers to check their owner's manuals for the proper fuels for their vehicles. It is also vital to automakers that there is an ability to trace documentation of fuel supply chains for a sufficient time period when there is a potential issue with fuel quality in the field. Auto manufacturers also support minimizing Reid Vapor Pressure (RVP) to no greater than 9 psi (including the federal Clean Air Act extra 1 psi waiver for E10, such that E10 does not exceed 9 psi) in the high ozone season or summer months, as noted below.

Our specific comments on the proposal to date are included below:

DEFINITIONS:

<u>p.5 Article 1, Definition "Handbook 130"; p. 19 Definitions for Article 7, and see p. 23, 7-705:</u>
The definition and its application incorporate only the 2016 edition of the National Council of Weights and Measures/NIST Handbook, and explicitly do not encompass subsequent editions or amendments. It may be helpful to clarify in Article 7 that the same definition and constraint applies for Article 7 as for Article 1, if that is the intent. We assume that Arizona will have to review their regulations each year to incorporate any desired new provisions in the Handbook.

It would also be helpful to explain with the final rule whether restriction to the 2016 edition is because state law or regulation disallows incorporation by reference of future, not yet published content.

AUTOMAKERS SUPPORT THE MINIMUM OCTANE GRADE 87 AKI for REGULAR GASOLINE

p. 23, R3-7-704 (B):
We agree with the Definitions as provided. Automakers do not support sale in any U.S. jurisdiction of so-called sub-grade gasoline (<87AKI [Anti-Knock Index]) regardless of altitude, climate or artifacts of use allowed in ASTM 4814. Such fuel provides no vehicle performance benefit for the current fleet, and adversely constrains OEM ability to design prospective engine technology that can improve engine and fuel efficiency toward better fuel economy and reduced GHG.

We also want to raise to your attention that apart from these proposed regulations, in the near future, automakers will likely seek higher octane gasoline, *e.g.,* to enable smaller, higher compression engines that will need additional anti-knock protection to accommodate new combustion properties.

RETAIL DISPENSER LABELING:

p. 23-4, 7-705 (C) (1):
Your Proposed Section says:
C. Oxygenated fuel.

1. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.

We propose clarifying the proposed provision to instead read:
C. Oxygenated fuel.

1. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing more 10 per cent or higher by volume of oxygen (E11 or higher) is clearly labeled with the fuel ethanol volume per cent information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if greater than 10 per cent fuel ethanol by volume.

This will avoid mixing weight vs. volume percent, and confusing consumers by trying to label for <E11. Test methodology included in the Arizona regulations may need to be updated to volume rather than weight percent (or a conversion to volume percent).

p. 25, 7-708 (A):
States: "The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate, and as specified in A.R.S. 3-3491 for other

oxygenates." It would beneficial to also write this provision in terms of the allowable volume percent ethanol. (If necessary, a parenthetical could be added that the maximum oxygen content also not exceed 4 per cent by weight...), and use a separate section from ethanol provisions to address other oxygenates.

p. 34, 7-751(B) (7) (a) and (b):
The provisions for Arizona Clean Burning Gasoline Requirements say in (a)(i) that the minimum *oxygenate* content is 10 per cent fuel ethanol by volume in certain months; and in (b) the maximum *oxygen* content is 4 per cent by weight for fuel ethanol. It would be less confusing for CBG to just specify 10 percent by volume fuel ethanol (E10) is required (*i.e.,* as both minimum and maximum) (if necessary, a parenthetical could be added that the maximum oxygen content not exceed 4 percent by weight and shall comply....), and use a separate section to cover other oxygenates.

p. 24, R3-7-705 (D) (3), Biodiesel Blend Pump Labels:
Automakers strongly support language, as in this proposed rule that would require a label for biodiesel blends > B5, directing consumers to "CHECK OWNERS MANUAL". This provides customers with the reminder that their vehicle (or other equipment) may require different fuel than is being offered at a particular pump. Many light duty vehicles on the road today were designed for no more than B5 blends (which US EPA treats the same as diesel). While many trucks, and some passenger vehicles are warranted for use of up to B10 or B20, it is important that useful biodiesel content information, and the reminder to check for compatibility, be kept in front of customers of other vehicles or equipment. For the same reasons above, the Alliance also supports the need to label the % of Biodiesel (FAME) content in the final product blend.

p. 24, R3-7-705 (E), Ethanol Gasoline I Blend Pump Labels:
While Arizona's prior provision, consistent with the National Council of Weights and Measures Handbook 130 (2016), called for precautionary language "CHECK OWNERS MANUAL" for Ethanol Flex Fuel (p. 29 Paragraph B), we did not see that provision maintained in this draft. We urge that this language continue to be required on all dispensers distributing higher than E10 ethanol blends, in addition to the language required by the Federal Trade Commission in 16 CFR Part 306, to remind consumers to check what is appropriate for their vehicle and also other types of engines.

NOZZLES AND FILTERS:

p. 28, 7-717: We support use of uniform dispenser pump handle colors for diesel and diesel blends (green) and ethanol flex fuel (51-83% ethanol blend) (yellow). It should be specified that if a mid-level ethanol gasoline blend up to E50 is dispensed (for use in a Flex Fuel Vehicle only) the dispenser handle color should also remain yellow. Ideally, a national color code system would be of benefit to consumers.

The Alliance also supports requiring the proper SAE J285 nozzle specifications in these regulations. In modern vehicles, it is expensive to the consumer to repair the damage from mis-fueling vehicles. Every effort should be made by regulators to prevent customer mis-fueling, and one key means is to require the proper diameter nozzle.

7-717 (C) (3): we recommend be amended to read:

All biodiesel, biodiesel blends, diesel, and kerosene dispensers at a flow rate of 15 gallons per minute or lower have a 10-micron or smaller nominal pore-sized filter. High flow rate dispensers with a flow above 15 gallons per minute may have a 30-micron or smaller nominal pore-sized filter.

The 10-micron filtration for slower flow rates is needed for fuel cleanliness requirement for light duty diesel vehicles.

E15/Flex Fuel STATUS IN ARIZONA

p.24-27, R-3-7-708 (B) (1)(a) and (b) and other provisions:

We have heard that by Arizona statute, only up to 10% ethanol (E10) is allowed in Arizona's Clean Burning Gasoline (CBG) (analogous to RFG), required in Phoenix and surrounding county areas. We also understand that CBG-required areas represent about half the volume of gasoline sold in the State. We further understand that E15 and Ethanol Flex Fuel can be sold in the "conventional gasoline" areas of Arizona not subject to RFG (CBG or SIP) mandates. However, from the face of the proposed regulatory language, we found the status of ability to sell E15 and Flex Fuel ambiguous. It would be helpful to better explain their status in the regulation or at least in a Preamble with any final rule. If an additional workshop will be held, this would be a good topic to cover in more depth.

VAPOR PRESSURE LIMIT REQUIREMENTS NEED SUBSTANTIAL CLARIFICATION

p.25 et al., Sec. 3-7-708 [and p. 27, Sec. 3-7-714], p. 34, (3-7-751 (A) (6)]:

1. Alliance members as a group had a difficult time tracking the interaction of all the different (not co-located) provisions regarding vapor pressure limits for various gasoline products and seasons.

We suggest that the final regulations include or at least incorporate by reference a single, comprehensive table showing all of the State's gasoline vapor pressure requirements, for all months of the year, for CBG, conventional gasoline, ethanol gasoline blends, E15, Mid-Level Blends/Flex Fuel, and showing the relevant jurisdictions (*i.e.*, those covered by CBG or other specific gasoline/ethanol blend requirements, as well the conventional gasoline jurisdictions).

Also, in 7-708 (B) (2) (b) and 7-751 (A) (6), there is no rationale provided for allowing 10 psi gasoline for CBG covered areas only in the month of April, versus maintaining a consistent RVP requirement of 9 psi with March and May.

2. **The Alliance supports implementation of a 9 psi RVP cap on all high ozone season (aka summer) gasoline and ethanol gasoline blends, and keeping E10 at 9 psi *including* its extra 1 psi RVP waiver under the Clean Air Act, (i.e., there should be no 10 psi RVP E10).** This should apply to fuels not otherwise covered by lower vapor pressure caps in place pursuant to CBG, or other SIP requirements. Such limiting of vapor pressure will help reduce ozone precursor and other emissions statewide not only from vehicles but other equipment and storage tanks.

p. 35, Therefore, we support striking the last phrase in Sec. 3-7-708 (B) (1) ("by more than 1 psi"), so this provision would now read: "A gasoline ethanol blend that meets the

requirements in subsection B (1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814."

We also support changing (B) (1) (b) (ii) to read: The fuel ethanol content of the gasoline ethanol blend shall: "Not exceed 9 psi, including any applicable waiver condition under Section 211(f) of the Clean Air Act."

Also, (B) (2) should also disallow 10 psi RVP E10 or other gasoline ethanol blends in high ozone season outside the CBG area, *and* should not making an exception for the month of April for CBG areas.

EXEMPTIONS PROVIDED in 7-718 NEED CLARIFICATION

p.32, 7-718 (D) (1) (d) and (D) (2) (c):

Should be amended to read: "Any ... fuel sold...or dispensed was received from AND (*not or*) traceable to a person registered with the Department under subsection (A)(1) AND (*not or*) EPA under 40 CFR 80, subparts K or M. It is critical to the auto industry that the supply chain be clearly documented at every stage. Therefore, the provisions in (D) should also be augmented to specify within this section that the owner or operator of motor fuel dispensing sites must maintain records documenting the registration status of their suppliers for a stated time period.

p. 28-32, 7-718 (E): **Exemptions provision**

1. It is important for regulations to be written clearly to be able to identify and hold accountable all appropriate parties, in the event of quality issues for any type of motor fuel. Therefore, we support changing this proposal to require "biofuel producers, suppliers or blenders located *outside* of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier or blender located within Arizona" to also register, and ideally maintain records documenting which registered or other biofuel producers, suppliers or blenders they have supplied. In the alternative, at a minimum, State registered producers, suppliers, and blenders should have to document the identity and contact information for their unregistered out-of-state suppliers in reports to the Department under 7-718(A).

2. While 7-718 nominally applies to biofuels and biofuel blends, the rationale for the exemptions in (E)(2) for diesel and up to 5% biodiesel, (E)(3) for Biomass Diesel blends, and (E)(4) for "up to E10" gasoline is puzzling. The regulations should either cross reference in this provision where there are comparable provisions for registration, quality assurance, and retailer record keeping for these exempted fuels, or otherwise explicitly include them and broaden the scope of 7-718.

p.34, 7-751(A) (1)-(3):

These values need to be updated to reflect federal requirements in the U.S. EPA Tier 3 Final Rule (see 79 Federal Register 23414, April 28, 2014). The "refinery annual average" sulfur limit for gasoline/blends is now 10 ppm; and at retail there is a not to exceed 95 ppm downstream cap (see Tier 3 for more details).

p.34, 7-751 (B) (1) and (2): These values also need to be updated.

p. 34, 7-751 (B) (7) (a) and (b): ee retail dispenser labeling above.

CONCLUSION:
Thank you for consideration of our comments on this lengthy set of proposed amendments. Clear regulations serve suppliers, retailers, automakers and ultimately, consumers. With the strict regulations automobile manufacturers must meet, and complex requirements that state and county air quality districts face, high quality fuels, well-controlled vapor pressure for all summer /high ozone season gasoline, adequate supply chain information, and useful pump labels for consumers are essential.

Please add me to your outreach list for this rulemaking and any future workshops, and provide sufficient lead-time for travel arrangements for any workshop so that non-local stakeholders can make arrangements to attend. We welcome your feedback and questions.

Very truly yours,
/s/
Valerie J. Ughetta
Director, Automotive Fuels
202 326 5549
vughetta@autoalliance.org

cc: Curt Augustine, Alliance State Affairs Staff for Arizona

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:39 PM
To: Roger Fisk
Subject: FW: Rulemaking Review
Attachments: WM Rulemaking KM Review 6-1-16.docx

From: Kinzig, Russ [mailto:KinzigR@kindermorgan.com]
Sent: Saturday, July 23, 2016 2:15 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Rulemaking Review

Attached is a file with my comments on the rule. Some may make sense to you, others may not. I can live with most any suggestions rejected. As the ARS is not yet updated on the website, I was unable to double-check references and corrected references to Statute.

Somewhere in the Rule or Statute, I would like to see a clarification that biodiesel blends are B6 and above. The definition of diesel should include the fact that diesel may contain up to 5 vol% biodiesel and/or 5 vol% renewable diesel.

Give a call or email if you'd like to discuss . . .
Russ

TITLE 3. ARIZONA DEPARTMENT OF AGRICULTURE
CHAPTER 7. DEPARTMENT OF AGRICULTURE
WEIGHT AND MEASURES SERVICES DIVISION
ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section	
R3-7-101.	Definitions
R3-7-102.	Metrology Laboratory Testing and Calibration Fees
R3-7-103.	Licensing and Fees
R3-7-104.	Administrative Enforcement Action
R3-7-105.	Repealed
R3-7-106.	Repealed
R3-7-107.	Repealed
R3-7-108.	Time-frames for Licenses, Renewals, and Authorities to Construct
R3-7-109.	Administrative Hearing Procedures
R3-7-110.	Motion for Rehearing or Review
R3-7-111.	Repealed
R3-7-112.	Repealed
R3-7-113.	Renumbered
R3-7-114.	Repealed
R3-7-115.	Renumbered
R3-7-116.	Renumbered
R3-7-117.	Renumbered
Table 1.	Time-frames (in days)

ARTICLE 2. COMMERCIAL DEVICES

Section	
R3-7-201.	Licensing Process
R3-7-202.	Repealed
R3-7-203.	Approval, Installation, and Sale of Devices
R3-7-204.	Livestock and Vehicle Scale Installation
~~R3-7-205.~~	~~Taxi Cab License Display~~

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

Section	
R3-7-301.	Repealed
R3-7-302.	Handbook 130 and Handbook 133
R3-7-303.	Repealed
R3-7-304.	Repealed
R3-7-305.	Repealed
R3-7-306.	Repealed
R3-7-307.	Repealed
R3-7-308.	Repealed
R3-7-309.	Repealed
R3-7-310.	Repealed
R3-7-311.	Repealed
R3-7-312.	Repealed
R3-7-313.	Repealed

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

Section	
R3-7-401.	Repealed
R3-7-402.	Price-posting Inspection Procedure and Violation Exceptions
R3-7-403.	Repealed
R3-7-404.	Repealed
R3-7-405.	Repealed
R3-7-406.	Repealed
R3-7-407.	Repealed
R3-7-408.	Repealed
R3-7-409.	Repealed
R3-7-410.	Repealed
R3-7-411.	Repealed
R3-7-412.	Repealed

Department of Weights and Measures
ARTICLE 5. PUBLIC WEIGHMASTERS

Section
R3-7-501. Qualifications; License and Renewal Application Process
R3-7-502. Duties
R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action
R3-7-504. Scales and Vehicle Weighing
R3-7-505. Weight Certificates
R3-7-506. Seal of Authority
R3-7-507. Prohibited Acts

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

Section
R3-7-601. Qualifications; License and Renewal Application Process
R3-7-602. Duties
R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment
R3-7-604. Prohibited Acts
R3-7-605. ~~Material Incorporated by Reference~~ Repealed

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R3-7-701. Definitions
R3-7-702. Material Incorporated by Reference
R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
R3-7-704. Price and Grade Posting on External Signs
R3-7-705. ~~Price, Octane, and Lead Substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling
R3-7-706. ~~Unattended Retail Dispensers~~ Repealed
R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends
R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed
R3-7-710. Blending Requirements
R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-alcohol Blend Storage Tank Requirements
R3-7-712. Water in Service Station Motor Fuel Storage Tanks
R3-7-713. Motor Fuel Storage Tank Labeling
R3-7-714. Requirements for Motor Fuels Other than Arizona CBG
R3-7-715. Motor Fuel Quality Testing Methods and Requirements
R3-7-716. Sampling and Access to Records
R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Equipment
R3-7-718. Requirements for the Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends
R3-7-719. Repealed
R3-7-720. Renumbered
R3-7-721. Renumbered
R3-7-722. Reserved
through
R3-7-748. Reserved
R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB
R3-7-750. Registration Relating to Arizona CBG or AZRBOB
R3-7-751. Arizona CBG Requirements
R3-7-751.01. Repealed
R3-7-752. General Requirements for Registered Suppliers
R3-7-753. General Requirements for Pipelines and Third-party Terminals
R3-7-754. Downstream Blending Exceptions for Transmix
R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R3-7-757. Product Transfer Documentation; Records Retention
R3-7-758. Repealed
R3-7-759. Testing Methodologies
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB
R3-7-760. Compliance Surveys
R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB
R3-7-762. Penalties
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards

Table 3. Repealed

ARTICLE 8. REPEALED

ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

Section
R3-7-901. Material Incorporated by Reference
R3-7-902. Exemptions
R3-7-903. Equipment and Installation
R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-905. Initial Inspection and Testing
R3-7-906. Fee
R3-7-907. Operation
R3-7-908. Training and Public Education
R3-7-909. Recordkeeping and Reporting
R3-7-910. Annual Inspection and Testing
R3-7-911. Compliance Inspections
R3-7-912. Enforcement

ARTICLE 10. STAGE I VAPOR RECOVERY SYSTEMS

Section
R3-7-1001. Material Incorporated by Reference
R3-7-1002. Exemptions
R3-7-1003. Equipment and Installation
R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-1005. Initial Inspection and Testing
R3-7-1006. Fee
R3-7-1007. Operation
R3-7-1008. Training and Public Education
R3-7-1009. Recordkeeping and Reporting
R3-7-1010. Annual Inspection and Testing
R3-7-1011. Compliance Inspection
R3-7-1012. Enforcement
R3-7-1013. Stage II Vapor Recovery
Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

The definitions in A.R.S. §§ ~~41-2051~~ 3-3401, ~~41-2065~~ 3-3414, ~~41-2085~~ 3-3436, ~~41-2121~~, and ~~41-2131~~ 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the Department issues for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the Department that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Department that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   d. Stop performing weighmaster, deputy weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Department that the person is complying with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   e. ~~Maintain~~ Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   g. Excavate a vapor recovery site according to ~~R20-2-104(L)~~ R3-7-104(L);
   h. Comply with scheduling a test according to ~~R20-2-104(L)~~ R3-7-104(L); or
   ~~i. Retake a competency examination under A.R.S. § 41-2094.~~
3. "Application" means, for purposes of ~~R20-2-108~~ R3-7-108, forms ~~designated as applications~~ and all documents and additional information the Department requires an applicant to submit ~~with an application~~ when applying for a license.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.

6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
    a. At a location where there was not one previously;
    b. To replace all gasoline storage tanks; or
    c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2010~~ 2016 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.

~~15. "Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.~~

16. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2009~~ 2016 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
17. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January ~~2005~~ 2016 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions and amendments.

~~18. "NCWM" means the National Conference on Weights and Measures.~~

~~19.~~18. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.

~~20.~~19. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.

~~21.~~20. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.

~~22.~~21. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.

22. "NCWM" means the National Conference on Weights and Measures.
23. "NIST" means the National Institute of Standards and Technology.
24. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
25. "Out-of-service tag" means a red rejection tag that signifies ~~that~~ a commercial device does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, or this Chapter.
26. "Person" as defined in A.R.S. § ~~41-2051~~ 3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
27. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and may be used, unless the Department orders otherwise.
28. "Placed-in-service report" means the form that a registered service representative completes and submits to the Department after placing a commercial device in service.
29. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.
30. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
31. "Seal of authority" means a stamp or press of the Department's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
32. "Service Counter" means a display counter staffed by a sales associate and has a point of sale device located within for conducting customer sales transactions.

~~32.~~33. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Department.

~~33.~~ 34. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.

~~34.~~ 35. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.

~~35.~~ 36. "Underground storage tank" means a tank as described in A.R.S. § 49-1001~~(18)~~.

~~36.~~ 37. "Unit" means a quantity adopted as a standard of measurement.

~~37.~~ 38. "Vapor recovery registered service representative ~~No. 1~~" means an individual to whom the Department has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 or this Chapter including annual vapor-recovery tests.

~~38. "Vapor recovery registered service representative No. 2" means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.~~

39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, CARB Executive Orders, or this Chapter.

40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Department, ~~that~~ which certifies the accuracy of the weight of the commodity measured.

R3-7-102. Metrology Laboratory Testing and Calibration Fees

A. For all services of the Department's Metrology Laboratory, the Department shall charge $110 per hour with a minimum charge of $50.

B. In addition to the fee in subsection (A), the Department shall charge for travel and per diem at the rates established under A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

R3-7-103. Licensing and Fees

A. A license is effective on the first day of the month following the date that the license application is filed with the Department. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if the Department does not receive the payment by the due date. The Department shall not process a license or renewal application for which payment is delinquent.

C. The Department shall prorate a license renewal fee if the licensee's first renewal is fewer than 12 months from the date that license is issued.

D. The Department shall issue a full refund to a licensee for a license renewal fee only if the licensee provides written notice to the Department before the renewal fee due date that the renewal is not needed.

R3-7-104. Administrative Enforcement Action

A. The Department shall take progressive enforcement action for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The Department shall provide a copy of its inspection report to the person who owns or operates a location that the Department inspects. The report shall include the inspection results, violations, and enforcement action. The Department shall send a copy of the inspection report to the owner of a location by electronic mail if the owner has provided an electronic mail address to the Department.

C. The person who owns or operates a location inspected by the Department may request a hearing under ~~R20-2-109~~ R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The Department shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § ~~41-2115(B)~~ 3-3475(B).

F. Commercial device.

1. The Department ~~shall~~ may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.

2. The Department shall confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Department authority.

3. The Department shall condemn and confiscate a weight, measure, or other commercial device that the Department determines is incorrect and not capable of compliance with Handbook 44.

~~3.~~ 4. The Department shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.

a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.

b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.

~~4.~~ 5. The Department shall issue a warning tag when a commercial device is not in compliance with the requirements in Handbook 44 A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the ~~public~~ consumer. The Department shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.

~~5.~~ 6. The Department shall issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.

~~6.~~ 7. The Department shall issue an out-of-service tag if a Department inspector cannot conduct an inspection of a commercial device because of a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.

~~7.~~ 8. The Department shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.

~~8.~~ 9. The Department shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Department shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.

~~9.~~ 10. The Department shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Department shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.

~~10.~~ 11. In addition to any enforcement action under subsections (F)(1) through ~~(9)~~ (10):

a. If the Department finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:

i. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the person who owns or operates the commercial device; and

ii. The Department ~~shall~~ may impose a civil penalty up to $500 civil penalty on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.

b. If the Department finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:

i. The Department ~~shall~~ may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to $300 ~~civil penalty~~; and

ii. The Department ~~shall~~ may issue an administrative order to the person and impose a civil penalty up to $500 ~~civil penalty~~ at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy weighmaster.

1. The Department ~~shall~~ may issue an administrative order if a public weighmaster's:

a. Weigh tickets are not in numbered sequence or are missing,

b. If used, the seal ~~Seal~~ or press is not readable, or

c. Records are not maintained according to ~~R20-2-505~~ R3-7-505.

2. The Department ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster if:

a. The public weighmaster's weigh tickets contain inaccurate information,

b. The public weighmaster violates an administrative order, or

c. The public weighmaster misuses a seal or press or has an unauthorized seal or press.

3. The Department shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.

4. The Department shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.

5. The Department shall issue an administrative order and a civil penalty up to $300 to a person who performs public weighmaster duties without a license.

6. If a public ~~Weighmaster~~ weighmaster permits an unlicensed person to perform deputy ~~Weighmaster~~ weighmaster duties, the Department ~~shall~~ may:

a. Impose a civil penalty up to $300 ~~civil penalty~~ on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties;

b. Impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties; and

c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy weighmaster duties more than twice.

H. ~~Package~~ Packaging.

1. The Department shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:

a. Returning the package to the packer or manufacturer,

b. Labeling the package to reflect its correct quantity,

c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or

d. Repackaging the commodity so the package contains the quantity represented.

2. In addition to an administrative order, the Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.

1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.

2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price verification ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the Department completing the ~~reinspection~~ inspection.
   a. The Department ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ per violation on a person who fails a reinspection if the Department finds more than one item at more than its posted price.
   b. The Department ~~shall~~ may impose a civil penalty up to $200 ~~civil penalty~~ per violation on a person who fails a second reinspection. The Department shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.
3. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.
4. The Department ~~shall~~ may issue a warning tag to a person who does not have a written price-error policy. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the person does not have a written price-error policy upon reinspection.
5. The Department shall issue a warning tag to a person who does not have a price display visible to the ~~public~~ consumer at a check-out location. The Department shall issue an out-of-service tag if the person does not have a price display visible to the ~~public~~ consumer at a check-out location upon reinspection.

J. Price posting.
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price posting ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the Department completing the ~~reinspection~~ inspection.
3. The Department ~~shall~~ may impose a civil penalty up to $50 ~~civil penalty~~ for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
4. The Department ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ for each inspected lot not priced if a person fails a second reinspection.
5. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.

K. Fuel quality and labeling.
1. The Department shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The Department shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
2. The Department ~~shall~~ may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The Department ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 per octane level ~~civil penalty~~ or fuel grade to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
   a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
   b. Selling the motor fuel at the correct octane level,
   c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
   d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or
   e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.
4. The Department ~~shall~~ may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Department's request. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a person who provides the requested documentation between 24 and 72 hours. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.
1. The Department ~~shall~~ may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to $500 ~~civil penalty~~ on a person who:
   a. Begins construction or makes a major modification without an authority to construct plan approval,
   b. Does not comply with the authority to construct plan approval, or
   c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      i. The vapor recovery system and its components comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter; and
      ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.
2. The Department ~~shall~~ may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Department pre-burial inspection and ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the excavated system does not pass required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.
3. The Department shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Department shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.

4. The Department ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.
5. The Department ~~shall~~ may issue a warning tag to a person whose vapor recovery system labeling does not comply with ~~the authority to construct plan approval~~ R3-7-713. The Department ~~shall~~ may issue a stop-sale, stop-use tag and impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not correct a labeling violation within the time specified on a warning tag.
6. The Department shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under ~~R20-2-905~~ R3-7-905 or ~~R20-2-910~~ R3-7-910. If the test failure is isolated to a system component, the Department's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.

~~7.~~ M. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

~~M.~~ N. Registered service agency and registered service representative.

1. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service or test report, the Department shall:
   a. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service report, the Department ~~shall~~ may:
   b. Impose a civil penalty up to $50 ~~civil penalty~~ on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the Department ~~shall~~ may:
   a. Issue an administrative order,
   b. Impose a civil penalty up to $500 ~~civil penalty~~ and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The Department ~~shall~~ may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for which the unlicensed individual works.
5. The Department ~~shall~~ may issue an administrative order if a registered service representative places a commercial device into service without Department authorization. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency whose representative places a commercial device into service without Department authorization.
6. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a registered service agency whose registered service representative uses a metrology standard or vapor recovery ~~air-to-liquid (A/L) ratio~~ testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The Department shall confiscate a metrology standard or ~~A/L ratio~~ vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Department shall return the standard or equipment when it is properly certified.
7. The Department shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter:
   a. Notify the Department of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.
8. The Division may impose a civil penalty up to $300 on a vapor RSA that violates (M)(7)(a), (b), (d), or (e). The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a vapor recovery registered service agency that violates subsection (M)(7)(c) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Department ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for the first violation, and
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency for each subsequent violation by the registered service representative.
10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the registered service representative shall:
    a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by ~~R20-2-910~~ R3-7-910;
    b. Notify the Department of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and

c. Notify the Department of the time of the test required by ~~R20-2-910~~ R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.

11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the Department ~~shall~~ may:
    a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service representative;
    b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
    c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).

R3-7-105. Repealed

R3-7-106. Repealed

R3-7-107. Repealed

R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct

A. For each type of license, renewal, or authority issued by the Department, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.

B. For each type of license, renewal, or authority issued by the Department, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the Department receives an application.
   1. If the application is not administratively complete, the Department shall send a deficiency notice to the applicant.
      a. The deficiency notice shall state each deficiency and the information needed to complete the application.
      b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Department the missing information specified in the deficiency notice. The time-frame for the Department to finish the administrative completeness review is suspended from the date the Department mails the deficiency notice to the applicant until the date the Department receives the missing information.
      c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Department shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
   2. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.

C. For each type of license, renewal, or authority issued by the Department, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Department sends written notice of administrative completeness to the applicant.
   1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Department to finish the substantive review is suspended from the date the Department mails the request until the Department receives the information.
   2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the Department shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the Department deny the application within 15 days of the date of the notice of withdrawal. An applicant who desires to reapply shall begin the application process anew.
   3. The Department shall issue a written notice of denial of license, renewal, or authority if the Department determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:
      a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and
      b. The name and telephone number of a Department employee who can answer questions regarding the application process.
   4. If the applicant meets all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority the Department shall issue the license, renewal, or authority to the applicant.

D. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

E. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

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

R3-7-109. Administrative Hearing Procedures

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the Department's hearings.

R3-7-110. Motion for Rehearing or Review

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Department who is aggrieved by a decision rendered in the case may file with the Department, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Department. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Department may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:
   1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the Department.
   2. Misconduct of the Department, the administrative law judge, or the prevailing party.
   3. Accident or surprise that could not have been prevented by ordinary prudence.
   4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing.
   5. Excessive or insufficient penalties.
   6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
   7. That the decision is not justified by the evidence or is contrary to law.

D. The Department may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Department may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.

E. The Department, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.

F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The Department may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the Department permits reply affidavits, the replying party has five days in which to serve them.

G. If the Department makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Department may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Department's final decision.

R3-7-111. Repealed

R3-7-112. Repealed

R3-7-113. Renumbered

R3-7-114. Repealed

R3-7-115. Renumbered

R3-7-116. Renumbered

R3-7-117. Renumbered

Table 1. Time-frames (in days)

Type of License	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information	Overall Time-frame
Commercial Device ~~R20-2-201~~ R3-7-201	10	20	30	20	40
Public Weighmaster ~~R20-2-501~~ R3-7-501	10	20	30	20	40
Registered Service Agency/Representative ~~R20-2-601~~ R3-7-601	10	20	30	20	40
Authority to Construct ~~R20-2-904~~ R3-7-904	10	20	30	20	40

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201. Licensing Process

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the Department. The application shall be on a form supplied by the Department that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device; ~~and~~
4. The applicant's signature~~.~~ ; and
5. An electronic mail address of the owner or operator of the location where the commercial device will be operated for the Division to provide notice of inspections and reports.

R3-7-202. Repealed

R3-7-203. Approval, Installation, and Sale of Devices

A. A commercial device installed or placed in use after January 1, 1975, shall be prototype-approved by NCWM or have a certificate of approval from the California Type Evaluation Program.
   1. If a commercial device has been continuously licensed since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.
   2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Department inspection, the Department shall issue an out of service tag or confiscate the device per R3-7-104(F)(3) and revoke the commercial device license, ~~and a~~ A person shall ~~not~~ no longer use the device commercially.

B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

R3-7-204. Livestock and Vehicle Scale Installation

A. Portable livestock and portable vehicle scales shall be designed to be moveable from one location to another.
B. Portable scales and low-profile electronic scales shall be accessible for maintenance.
C. Notwithstanding Handbook 44, vehicle and livestock scales installed above ground shall have 2 feet minimum clearance from the bottom of the lowest platform support girder to the ground.
D. Notwithstanding Handbook 44, vehicle and livestock scales, installed with a pit, shall have 2 feet minimum clearance from the bottom of the main girder that is lowest in platform support to the pit floor.

~~**R3-7-205. Taxi Cab License Display**~~

~~A taxicab device licensee shall post the device license on the outside of the rear window of the taxicab.~~

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

R3-7-301. Repealed

R3-7-302. Handbook 130 and Handbook 133

A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.
B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:
   1. Clearly labels the price-per-pound where the packaged produce is displayed, and
   2. Deducts a tare for the packaging from the gross weight at the time of sale.
C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.
D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.
E. A person who owns or operates a plant nursery shall label each commodity with its identity, ~~container size,~~ and price, or post a sign with this information adjacent to the point of display.
F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

R3-7-303. Repealed

R3-7-304. Repealed

R3-7-305. Repealed

R3-7-306. Repealed

R3-7-307. Repealed

R3-7-308. Repealed

R3-7-309. Repealed

R3-7-310. Repealed

R3-7-311. Repealed

R3-7-312. Repealed

R3-7-313. Repealed

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

R3-7-401. Repealed

R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

A. The Department shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the Department finds an alleged price-posting violation involving an item used during its price-verification inspection, the Department shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:
   1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12), or
   2. Less than 98 percent of the prices of inspected items are posted accurately.
   3. An incorrect price is posted for an item on, in, or behind a service counter.
   4. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter.

D. The following are not price-posting violations:
   1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
   2. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space or at the farthest left and farthest right side of the shelf or hooks with the same priced items. The price for commodities with the same uniform price code may be more than three feet from the price posted if they are all displayed in the same location;
   3. A price posted above the highest item in a vertical location is the price of all items of the same price in that location;
   4. A storage area that is posted as a storage area for which a customer should ask for assistance;
   5. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
   6. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
   7. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display. A service counter is not an advertising display;
   8. A menu-type sign at a point of display that lists the name and price of every item at the point of display in ~~text at least 3/8" high~~ legible text;
   9. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;
   10. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department; ~~and~~
   11. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted~~.~~; and
   12. An item that does not have a price and is located on, in, or behind a service counter.

R3-7-403. Repealed

R3-7-404. Repealed

R3-7-405. Repealed

R3-7-406. Repealed

R3-7-407. Repealed

R3-7-408. Repealed

R3-7-409. Repealed

R3-7-410. Repealed

R3-7-411. Repealed

R3-7-412. Repealed

ARTICLE 5. PUBLIC WEIGHMASTERS

R3-7-501. Qualifications; License and Renewal Application Process

A. In addition to the requirements of A.R.S. § ~~41-2093~~ 3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:
1. Be at least 18 years old,
2. Be able to operate a scale accurately, and
3. Be able to execute weight certificates properly.

B. A person shall not perform the duties of a public weighmaster ~~or deputy public weighmaster~~ until the person passes the written weighmaster examination administered by the Department. A person may not take the examination more than two times in six months.

C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the Department. A separate application shall be submitted for each location the public weighmaster or deputy weighmaster will issue weight tickets.
1. The application form includes:
   a. The applicant's name, address, and telephone number;
   b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
   c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
   d. The applicant's signature.
2. The public weighmaster's application form also includes:
   a. The name of each deputy public weighmaster operating at each location;
   b. A statement that the public weighmaster understands they are responsible to ensure that any deputy weighmasters working at the location are adequately trained and licensed;
   ~~b.~~ c. The name and address of the scale; and
   ~~c.~~ d. The scale description.
3. The deputy weighmaster application shall include a certification that they understand the requirements on a form provided by the Department and be signed by both the public weighmaster and the applicant.
~~3.~~ 4. An applicant may be required to submit evidence of qualifications and shall be examined regarding competence or qualifications.
5. The public weighmaster shall ensure all deputy weighmasters are licensed for the location prior to their issuance of weight tickets.

D. Before the Department issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.

E. The Department does not charge a fee to process a change in name or address.

R3-7-502. Duties

A public weighmaster shall:
1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;
2. Use scales according to applicable laws and rules; ~~and~~
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster.
4. Add or remove deputy weighmasters from a particular location to ensure each location has the correct licensed deputy weighmasters.

R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action

A. The Department may deny a weighmaster license for any of the following reasons:
1. Providing false or misleading information;

2. Failing to meet the requirements stated in this Article; or
3. Any of the reasons stated in subsections (B)(1) through (9).

B. The Department may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Department has determined that the public weighmaster:
1. Does not have the ability to weigh accurately;
2. Has not correctly made weight certificates;
3. Has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter;
4. Has falsified a weight certificate;
5. Has delegated authority to someone other than a licensed ~~public weighmaster or~~ deputy public weighmaster;
6. Has improperly used a weighmaster's seal of authority;
7. Has presigned certificates for later use;
8. Has issued a weight certificate on which changes or alterations were made; or
9. Has used a scale for public weighing that is not properly licensed.

R3-7-504. Scales and Vehicle Weighing

A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.
B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.
C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.
D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
E. The Department shall separately license and regulate each scale location.
F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

R3-7-505. Weight Certificates

A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy weighmaster has accurately and personally determined.
B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.
C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.
D. A weight certificate is valid only when properly signed, along with the license number, ~~and sealed~~ by the issuing weighmaster or the weighmaster's deputy. The name and license number of the public weighmaster or deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a handwritten signature and license number if the electronically imprinted name and license number is that of the weighmaster who weighed, measured, or counted the commodity.
E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.
F. A weight certificate shall state:
1. The date of issuance;
2. The name of the declared owner, agent, or consignee of the material weighed;
3. The accurate weight of the material weighed or counted;
4. The means by which the material is being transported at the time it is weighed or counted;
5. An identification number of the transporting unit, including a license number; and
6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed ~~and sealed~~, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."
7. The printed name of the principal weighmaster and principal weighmaster's license number.

G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically. A weighmaster shall not use another filing system without Department approval.

R3-7-506. Seal of Authority

The use of a seal for the certification of weight certificates is optional if agreed to by both the weighmaster and the consumer. If a seal is used by the public weighmaster, the following shall apply:

~~A.~~ 1. A weighmaster shall obtain a seal for the certification of weight certificates at cost through the Department.
~~B.~~ 2. The Department shall assign a number to a seal identifying the public weighmaster and the specific location for which the seal is issued.
~~C.~~ 3. A seal is the property of the state. A weighmaster shall surrender a seal to the Department within 30 days after the weighmaster no longer operates as a licensed public weighmaster.
~~D.~~ 4. A public weighmaster shall have one seal for use at each scale location.

~~E.~~ 5. A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.

~~F.~~ 6. A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the Department during all business hours.

R3-7-507. Prohibited Acts

A. A person shall not:
   1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
   2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a person authorized to act for a public weighmaster;
   3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a person authorized to act for a public weighmaster;
   4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;
   5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weighmaster;
   6. Use without authorization the title "licensed public weighmaster" or any similar title;
   7. Represent oneself to be a public weighmaster without holding a license issued by the Department;
   8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
   9. Use an unlicensed scale in the performance of public weighmaster duties; or
   10. Operate a scale for public weighing unless that person is licensed as a public weighmaster.

B. People engaged in the business of printing weight certificate forms, their representatives, and the Department are exempt from the prohibitions specified in subsections (A)(2) and (3).

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R3-7-601. Qualifications; License and Renewal Application Process

A. Registered service agency.
   1. To obtain a license as a registered service agency, an applicant shall provide evidence that:
      a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
      b. The applicant provided its representative with a copy of the portions of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter relating to registered service representative duties;
      c. The applicant:
         i. Possesses the necessary certified standards and testing equipment to service commercial devices; and
         ii. Possesses the necessary test equipment calibrated annually by the equipment manufacturer to perform an air to liquid (A/L) test of a vapor recovery system or vapor recovery component properly; or
         iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
      d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter.
   2. The Department shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
   3. An applicant for a registered service agency license shall submit an application form, obtained from the Department that provides:
      a. Name, address, telephone number, electronic mail address, and facsimile number;
      b. License information from other states;
      c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
      d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
      e. Branch office information;
      f. Names of registered service representatives and their experience with other registered service agencies or states;
      g. License and disciplinary history; and
      h. Applicant's signature.

B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Department with evidence that the third-party registered service agency:
   1. Holds a valid license issued by the Arizona Registrar of Contractors,
   2. Complies with workers' compensation insurance laws, and
   3. Maintains liability insurance sufficient to cover the value of work to be performed.

C. Registered service representative.
   1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
      a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;

b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
c. The applicant will operate according to appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders; and this Chapter; and
d. The applicant has passed the competency examination specified in subsection (D).

2. An applicant for a registered service representative license shall submit an application on a form obtained from the Department that provides:
   a. Name, address, telephone number, and facsimile number;
   b. License information from other states;
   c. An indication of whether the applicant is applying to be a registered service representative~~,~~ or a vapor recovery service representative ~~No. 1, or vapor recovery service representative No. 2~~;
   d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
   e. Work experience with other registered service agencies in Arizona or other states;
   f. License and disciplinary history; and
   g. Applicant's signature.
3. An applicant for a vapor recovery registered service representative ~~No. 1~~ license shall maintain and make available to the Department upon request evidence of being:
   a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
   b. Determined qualified by the Department to test or repair all vapor recovery systems and components.

D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a Department-administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.
2. An applicant shall bring a copy of Handbook 44 and ~~Handbook 112~~ to the examination site.
3. An applicant shall complete the competency examination within the time specified by the Department.
4. The Department shall not allow an applicant to take the competency examination more than two times in six months.

E. As required under A.R.S. § ~~41-2094(G)~~ 3-3454(G), the Department shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Department for the registered service representative.

F. Renewal of a registered service representative license. Under A.R.S. § ~~41-2094(D)~~ 3-3454(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with ~~R20-2-603(E)~~ R3-7-603(E). Before complying with ~~R20-2-603(E)~~ R3-7-603(E), the registered service agency shall ensure that annually
1. A vapor recovery registered service representative ~~No. 1 or 2~~ completes the Department's training class, and
2. A vapor recovery registered service representative takes and passes the Department's written vapor recovery competency examination, ~~as follows:~~
   ~~a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and~~
   ~~b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.~~

G. The Department does not charge a fee to process a change in business name or address.

R3-7-602. Duties

A. Registered service agency.
1. A registered service agency shall:
   a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
   b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter, CARB test procedures, and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Department.
   ~~a. The registered service agency shall complete the placed-in-service report in triplicate;~~
   ~~b.~~ a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report ~~mail the original of the properly completed and signed placed-in-service report~~ to the Department. If an online placed-in-service report is not available for the device, a paper report shall be submitted;
   ~~c.~~ b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;
   ~~d.~~ c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;
   ~~e.~~ d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;
   ~~f.~~ e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;

~~g.~~ f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and

~~h. g. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.~~

3. A registered service agency shall have all equipment used for commercial device certification and ~~A/L testing~~ certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.
4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.
5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
6. A registered service agency shall use a form approved by the Department to record vapor recovery test results and violations. The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test shall be ~~mailed~~ emailed within seven days after completion of the test.
7. ~~A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.~~
8. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, ~~approved by the Department,~~ at least ~~10~~ 5 business days before an initial or annual test.

B. Registered service representative.
   1. A registered service representative shall:
      a. Install only commercial devices that meet the requirements of this Chapter;
      b. Perform all vapor recovery tests according to this Chapter;
      c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, this Chapter, Handbook 44, ~~Handbook 112,~~ and CARB Executive Orders are met;
      d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
      e. Complete placed-in-service reports accurately.
   2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by ~~R20-2-910~~ R3-7-910. The registered service representative shall notify the Department of the stop-sale, stop-use by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Department ~~can~~ may witness the test.

R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

A. The Department shall not issue a license or renewal until an applicant pays all appropriate fees.
B. Upon receipt and acceptance of all required documents, fees, and Department certification of standards, the Department shall issue the agency a license or renewal.
C. The Department shall include on a license an assigned number, that remains effective until either withdrawn by the Department or until it expires. The Department shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.
D. Neither a registered service agency nor a registered service representative shall transfer a license.
E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.
F. The Department may deny a license or renewal for any of the following reasons:
   1. Providing false or misleading information;
   2. Failure to meet annual certification requirements for standards or testing equipment;
   3. Failure to meet the requirements stated in this Article; or
   4. For any reason that would be grounds for suspension, revocation, or refusal to renew.
G. The Department may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter.
H. Every registered service agency and representative shall comply with the Department's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § ~~41-2067(F)~~ 3-3416(F).

R3-7-604. Prohibited Acts

A. A person shall not:
   1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the Department;
   2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
   3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the Department.

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B. A registered service agency or registered service representative shall not:
1. Fraudulently complete or file a placed-in-service report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform a function without certified equipment;
4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;
5. Fail to report a commercial device to the Department within two business days of finding that device is out of compliance;
6. Install, calibrate, or repair a commercial device without placing a ~~sequentially numbered~~ decal or label on the device as prescribed by the Director;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

~~**R3-7-605. Material Incorporated by Reference**~~

~~The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments:~~

1. ~~California Air Resources Board Executive Order G-70-17-AD, *Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System*, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
2. ~~California Air Resources Board Executive Order G-70-36-AD, *Modification of Certification of the OPW Balance Phase II Vapor Recovery System*, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
3. ~~California Air Resources Board Executive Order G-70-52-AM, *Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems*, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
4. ~~California Air Resources Board Executive Order G-70-70-AC, *Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities*, June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
5. ~~California Air Resources Board Executive Order G-70-150-AE, *Modification to the Certification of the Marconi Commerce Systems Inc. (MCS) "Formerly Gilbarco" VaporVac Phase II Vapor Recovery System*, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
6. ~~California Air Resources Board Executive Order G-70-153-AD, *Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System*, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
7. ~~California Air Resources Board Executive Order G-70-154-AA, *Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System*, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
8. ~~California Air Resources Board Executive Order G-70-163-AA, *Modification to the Certification of the OPW VaporEZ Phase II Vapor Recovery System*, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
9. ~~California Air Resources Board Executive Order G-70-164-AA, *Modification to Certification of the Hasstech VCP 3A Vacuum Assist Phase II Vapor Recovery System*, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
10. ~~California Air Resources Board Executive Order G-70-165, *Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle*, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
11. ~~California Air Resources Board Executive Order G-70-169-AA, *Modification to the Certification of the Franklin Electric IN-TELLIVAC Phase II Vapor Recovery System*, August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
12. ~~California Air Resources Board Executive Order G-70-177-AA, *Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System*, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
13. ~~California Air Resources Board Executive Order G-70-180, *Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities*, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
14. ~~California Air Resources Board Executive Order G-70-183-AA, *Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.)*, June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
15. ~~California Air Resources Board Executive Order G-70-186, *Certification of the Healy Model 400 ORVR Vapor Recovery System*, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
16. ~~California Air Resources Board Executive Order G-70-188, *Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System*, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
17. ~~California Air Resources Board Executive Order G-70-191-AA, *Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.)*, July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

~~18. California Air Resources Board Executive Order G-70-196, *Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System*, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-701. Definitions

In addition to the definitions in ~~R20-2-101~~ R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Area A" has the same meaning as in A.R.S. ~~§ 49-541~~ §3-3401.

"Area B" has the same meaning as in A.R.S. ~~§ 49-541~~ §3-3401.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § ~~41-2124(J)~~ 3-3493(I).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.

"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; ~~or~~

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

~~*"Biodiesel" means a diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01.* A.R.S. § 41-2051~~ "Biodiesel" has the same meaning as prescribed under A.R.S. §3-3401.

~~*"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend.* 41-2051~~ "Biodiesel blend" has the same meaning as prescribed under A.R.S. § 3-3401. ((having a biodiesel content of 6 vol% or greater))

Commented [RK1]:

~~"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79;~~

~~Is a mono-alkyl ester;~~

~~Meets the standards in ASTM D6751;~~

~~Is intended for use in some engines designed to run on conventional diesel fuel, and~~

~~Is derived from nonpetroleum renewable resources.~~

~~"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.~~

~~"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a blend component in motor fuel~~ "Biofuel" has the same meaning as prescribed under A.R.S. §3-3401.

~~"Biofuel blend" means a motor fuel composed of biofuel and petroleum-based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.~~ "Biofuel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Biofuel blender" means a person that modifies a gasoline, gasoline blend, diesel, or diesel blend by adding a biofuel.

"Biofuel producer" means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

~~"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.~~ "Biomass" has the same meaning as prescribed under A.R.S. § 3-3401.

"Biomass-based diesel" has the same meaning as prescribed under A.R.S. §3-3401.

"Biomass-based diesel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

~~"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.~~

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in ~~R20-2-702(11)~~ R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in ~~R20-2-702(8)~~ R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

~~*"Diesel"* or "diesel fuel" *means a refined middle distillate that is used as a fuel in a compression ignition internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051~~ "Diesel fuel" or "Diesel" has the same meaning as prescribed under A.R.S. § 3-3401. ((may include up to 5 vol% biodiesel content))

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

~~"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D5798, which is incorporated by reference in R20-2-702.~~

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in ~~R20-2-702~~ R3-7-702.

"Ethanol flex fuel" has the same meaning as prescribed under A.R.S. §3-3401.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the ~~specifications~~ requirements in ASTM D4806, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.

~~"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal combustion engines. Gasoline does not include diesel fuel or E85 ethanol flex fuel.~~ "Gasoline" has the same meaning as prescribed under A.R.S. §3-3401.

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

~~"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, which are not currently available on the retail market, for an automotive manufacturer.~~ "Manufacturer's proving ground" has the same meaning as prescribed under A.R.S. §3-3401.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

~~*"Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and the ethanol blend E85 as defined in ASTM D5798. A.R.S. § 41-2051*~~ "Motor Fuel" has the same meaning as prescribed under A.R.S. § 3-3401.

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"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in ~~R20-2-751(A)(1)~~ R3-7-751(A)(1) through (7), ~~R20-2-751(B)(1)~~ R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

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A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

~~"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private raceccourse for the entertainment of the general public.~~ "Motor vehicle racing event" has the same meaning as prescribed under A.R.S. §3-3401.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent; not blended with motor fuel.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

~~*"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the United State environmental protection agency pursuant to 42 United States Code §7545(f).* A.R.S. § 41-2121~~ "Oxygenate" has the same meaning as prescribed under A.R.S. §3-3401.

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

~~"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,~~

~~Is not a mono-alkyl ester,~~

~~Is intended for use in engines designed to run on diesel fuel,~~

~~Is derived from petroleum and nonpetroleum renewable resources,~~

~~Meets the requirements of ASTM D975, and~~

~~Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.~~

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

~~"Pressurant" means a blendstock component of an E85 blend for sale within the CBG-covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.~~

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the Director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

~~"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.~~ "Product transfer document" has the same meaning as prescribed under A.R.S. §3-3401.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend.

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody~~, but not ownership,~~ of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter or another terminal.

Commented [RK4]: A terminal owner might have title

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"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

~~"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.~~ "Vehicle emissions control area" has the same meaning as prescribed under A.R.S. §3-3401.

"VOC" means volatile organic compound.

R3-7-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 ~~1, 1998~~ Edition, Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
2. ASTM Standard D975, ~~2010~~ ~~2015a~~ 2015c (ASTM D975-~~10~~ 15bc), "Standard Specification for Diesel Fuel Oils," published ~~April~~ October ~~2010~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
3. ASTM Standard D4806, ~~2009~~ ~~2015~~ 2016a(ASTM D4806-~~09~~ ~~15~~ 16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published ~~July 2009~~ ~~2015~~, February 2016 ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
4. ASTM Standard D4814, ~~2009b~~ ~~2015a~~ 2016b(ASTM D4814-~~09b~~ ~~15a~~ 16b), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published ~~September 2009~~ ~~October 2015~~ April 2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
5. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
6. ASTM Standard D5798, ~~2009b~~ ~~2014~~ 2015 (ASTM D5798-~~09b~~ ~~14~~ 15), "Standard Specification for ~~Fuel~~ Ethanol Fuel Blends ~~(E75-E85)~~ for Flexible-Fuel Automotive Spark-Ignition Engines," published ~~May 2009~~ ~~2014~~ October 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
7. ASTM Standard D6751, ~~2009a~~ 2015c (e 2016) (ASTM D6751-~~09a~~ 15a), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published ~~February 2010~~ December 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
8. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
9. The Federal Complex Model ~~as~~ contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
10. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

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11. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
12. ASTM Standard D7467, ~~2009a~~ 2015 (ASTM D7467-~~09a~~ ~~15a~~15c), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published ~~June 2009~~ October 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
13. SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096-0001 or www.sae.org.

B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers

A. After completing an inspection, the Department shall return all motor fuel to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the Department collected the motor fuel.

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B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the Department collected the motor fuel, the Department shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.

R3-7-704. Price and Grade Posting on External Signs

A. A person who owns or operates a ~~service station~~ motor fuel dispensing site that has an external sign shall ensure that the sign:
   1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
   2. Identifies the self-service and full-service prices, if different;
   3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;
   4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2", whichever is larger, and is visible from the road;
   5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
   6. Describes ~~diesel~~ the fuel as No. 1 diesel, #1 diesel, No. 2 diesel, #2 diesel, premium diesel, biodiesel, or biodiesel blend; ~~and~~
   7. Describes gasoline ethanol blends meeting the requirements of ~~R20-2-705~~R3-7-705(E) as ethanol flex fuel; and
   8. Identifies the unit of measure of the price, if it is other than per gallon.

B. ~~If~~ For the following terms ~~are~~ used ~~in~~ on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

C. A person may use an alternative to the descriptions provided in subsection (B) upon written approval by the Associate Director.

R3-7-705. ~~Price, Octane, and Lead-substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling

A. ~~A service station~~ The owner or operator of a motor fuel dispensing site shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a ~~service station~~ motor fuel dispenser:
   1. Is clean, legible, and visible at all times;
   2. Is displayed electronically or with a sign or label on the upper ~~60~~ 50 percent of each face of the dispenser;
   3. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
   4. Displays the highest price of motor fuel sold from the dispenser if the dispenser is capable of dispensing and computing the price of multiple grades of motor fuel;
   5. ~~Displays a discount, if offered, in letters at least ¼" in height on each face of the dispenser and next to the undiscounted price;~~
   6. ~~Displays both a cash and credit price on a dispenser that is capable of electronically displaying both cash and credit prices;~~
   7. ~~Posts both a cash and credit price on each face of a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices;~~
   8. ~~Posts a price-per-gallon sign next to or on a non-price computing dispenser for a retail only sale of liquefied petroleum gas used as an alternative motor fuel~~ Complies with Handbook 44, Section 3.30, Liquid Measuring Devices, Section S.1.6.4; and
   ~~9.~~ 6. Complies with the requirements of ~~R20-2-704(A)(1)~~ R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), ~~and~~ (A)(7), (A)(8) and (B).

B. A person who owns or operates a ~~service station~~ motor fuel dispensing site shall ensure that:
   1. ~~The~~ A label meeting the requirements of 16 CFR 306 imprinted with the octane rating of each grade of gasoline is displayed on the upper ~~60~~ 50 percent of each face of each motor fuel dispenser that offers gasoline~~, as prescribed by and meets the requirements of 16 CFR 306,~~ and
   2. The signs required by Handbook 130, for ~~gasoline~~ motor fuel dispensers that dispense gasoline with lead substitute, are displayed on the upper ~~60~~ 50 percent of each face of each dispenser in letters at least 1/4" in height.

C. Oxygenated fuel.
   1. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.
   2. The owner or operator of a motor fuel dispensing site shall ensure that the required label indicates the maximum percent by volume of oxygenate contained in the oxygenated fuel by stating: "May contain up to ___% fuel ethanol."
   3. In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that the required label contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (C)(2) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required under subsection (C)(2).
   4. The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (C) are:

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a. Displayed on the upper 50 percent of each face of a motor fuel dispenser;
b. Printed in black or white block letters on a sharply contrasting background; and
c. Printed with lettering no smaller than 1/4 inch.

5. The owner or operator of a motor fuel dispensing site shall not label gasoline as "non-ethanol containing" if the gasoline contains a detectable amount of ethanol.

D. Biodiesel blends. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers biodiesel or biodiesel blends meets the following requirements:
1. The labeling requirements established under A.R.S. § 3-3433(K);
2. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified; and
3. Every motor fuel dispenser that dispenses biodiesel, B99 or B100, or a biodiesel blend containing diesel fuel with a biodiesel percentage greater than five percent shall be labeled with the following information on the upper 50 percent of the front panel of each motor fuel dispenser: "CHECK OWNER'S MANUAL" in a type at least 1/4 inch in height by 1/32 inch stroke and block-style letters of a color that contrasts with the background color.

E. Ethanol flex fuel. The owner of operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers ethanol flex fuel with an ethanol concentration of no less than 51 and no more than 83 volume percent is labeled in accordance with 16 CFR 306.

F. Electricity sold as a motor vehicle fuel. Electricity ~~sole~~ sold as a motor vehicle fuel shall meet the requirements of Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.34.

G. Premium diesel. Fuel labeled as "premium diesel" shall meet the specifications in ~~R20-2-714(D).~~ R3-7-714(D).

H. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

I. All dispensers for other motor fuels shall meet the labeling requirements of 16 CFR 306.

J. All dispensers shall have decal that with the Division's name and phone number displayed in the upper 50 percent of the front panel of each dispenser. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. 3-3414(A)(13) satisfies this requirement.

J. All labels required under this section shall be clean, legible, and visible at all times.

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R3-7-706. ~~Unattended Retail Dispensers~~ Repealed

~~In addition to all labeling and sign requirements in this Article, an owner or operator of an unstaffed service station shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.~~

R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. If ~~Whether~~ a lead substitute is present in the gasoline, ~~and~~ the type of lead substitute present;
9. For a the following biofuel or biofuel blends; ~~the percentage of biofuel in the finished product;~~
   a. Ethanol Flex Fuel shall contain the statement, "Ethanol Flex Fuel, minimum 51% ethanol;
   b. Biodiesel shall contain a declaration of the volume percent biodiesel in the blend, as well as the grade of diesel in the blend;
   c. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product; and;
10. The final destination:
   a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address, and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
   c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection ~~(A)(10)~~ (A)(10)(b) and (A)(10)(c), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.

D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the Department's request.

E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.

F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for Department review.

G. The Department shall accept a legible photocopy of a product transfer document instead of the original.

H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with ~~R20-2-757~~ R3-7-757.

R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § ~~41-2122~~ 3-3491. The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates.

B. Special provisions for gasoline ethanol blends.

1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
   a. ~~The gasoline ethanol blend shall contain fuel ethanol.~~ The concentration of ~~the fuel~~ ethanol~~, excluding the required denaturing agent,~~ shall be:
      i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
   b. The ~~fuel~~ ethanol content of the gasoline ethanol blend shall:
      i. Be determined using ~~the appropriate test method listed in~~ ASTM ~~D4814, and~~ ASTM method D4815
      ~~ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act;~~
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. ~~Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:~~
   ~~a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      ~~ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;~~
   ~~b. The finished blend complies with the standards in ASTM D4814; or~~
   ~~c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      ~~ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived.~~

~~4.~~ 3. Except for the special RVP provisions in subsection (B)(1)(a), ~~A~~ a gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in ~~R20-2-707~~ R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed

~~A. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.~~

~~B. The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60 percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of oxygenate contained in the oxygenated fuel shall state: "May contain up to _____ % fuel ethanol."~~

~~C. In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).~~

~~D. The owner or operator of a motor fuel dispensing site shall ensure that:~~
   ~~1. The label required by subsection (B) is clean, legible, and visible at all times;~~
   ~~2. The label is printed in black or white block letters on a sharply contrasting background; and~~

Commented [RK8]: As enforcement is testing by D4815, the results are only measuring pure ethanol, not DFE. The required denaturant is 1.96 v% and currently 5 v% max, going down to 3 v% in 2017.

Commented [RK9]: This condition is covered above

~~3. The lettering on labels required by subsections (B) and (C) is no less than 1/4".~~

R3-7-710. Blending Requirements

A. ~~A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs~~ Neat oxygenate blending is prohibited at a motor fuel dispensing site or fleet vehicle fueling facility.

B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that is not CBG and does not contain the amount of oxygen required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or ~~R20-2-751~~ R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:

1. Add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend;
2. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or ~~R20-2-751~~ R3-7-751; or
3. Empty the storage tank ~~and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend~~.

R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-alcohol Blend Storage Tank Requirements

A. Before a person adds ~~an alcohol-oxygenated~~ the initial gasoline-alcohol blend into a storage tank, the person shall:

1. Test the storage tank for the presence of water and, if any water is detected, remove the water from the storage tank; and
2. Install a fuel filter designed for use with ~~alcohol-oxygenated~~ gasoline-alcohol blends in the fuel line of all motor fuel dispensers that dispense ~~alcohol-oxygenated~~ gasoline-alcohol blends.

B. If water is detected in a storage tank ~~or in an alcohol-oxygenated~~ containing a gasoline-alcohol blend ~~in a storage tank~~, the owner or operator shall empty the storage tank.

R3-7-712. Water in Service Station Motor Fuel Storage Tanks

A service station owner or operator shall ensure that water in a service station motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The service station owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

R3-7-713. Motor Fuel Storage Tank Labeling

A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:

1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2 or #2 diesel fuel,
6. Premium diesel,
~~6.~~ 7. Gasoline vapor return,
~~7.~~ 8. Biodiesel or biodiesel blend, or
~~8.~~ 9. ~~E85~~ Ethanol flex fuel.

B. An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

E. A person shall not deliver motor fuel to a motor fuel dispensing site unless the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A).

Commented [RK10]: This seems to prohibit dropping premium gasoline into a midgrade or regular tank or premium diesel into a regular diesel tank.

R3-7-714. Requirements for Motor Fuels Other than Arizona CBG

A. A person that owns or operates a motor fuel dispensing site, ~~or~~ transmix, or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale ~~at the motor fuel dispensing site or transmix or production facility~~ meets ~~all~~ the ~~appropriate~~ requirements of the applicable specifications in ~~R20-2-702~~ R3-7-702 except that the maximum vapor pressure of non-ethanol blended gasoline from May 1 through September 30~~, gasoline shall meet the specifications requirements in ASTM D4814 except maximum vapor pressure~~ shall be 9.0 pounds per square inch.

B. The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

C. The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:

1. 87 for unleaded, ~~or~~ regular, Reg, UNL, or UL;
2. ~~88~~ 89 for mid-grade, Mid, Plus, or any other gasoline with an octane rating of 89 or higher ~~extra, or any other gasoline with an octane rating of 88 or higher~~, and

3. ~~90~~ 91 for premium, PREM, super, supreme, high, high performance, or any other gasoline with an octane rating of 91 or higher ~~premium, or any other gasoline with an octane rating of 90 or higher~~.

D. Premium diesel fuel. In addition to meeting the requirements in ASTM D975, all diesel fuels identified as premium diesel on a retail dispenser or product transfer document shall meet the requirements in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

~~D.~~ E. Prohibited activities regarding a motor fuel sold or offered for sale outside the CBG-covered area.

1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § ~~41-2122~~ 3-3491.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

F. Biofuels and biofuel blends. Biofuel producers, blenders, and biofuel suppliers and owners or operators of motor fuel dispensing sites shall comply with the requirements in R3-7-718.

R3-7-715. Motor Fuel Quality Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the producer of a motor fuel shall test the motor fuel ~~for its motor fuel properties~~ using the methodologies required in the relevant specification incorporated by reference in ~~R20-2-702~~ R3-7-702 ~~and ensure that the motor fuel meets the applicable specifications in the material incorporated by reference in R20-2-702 R3-7-702~~.

B. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the ~~specifications of~~ requirements in ASTM D975.

C. The owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale ~~outside the CBG-covered area~~ has its octane rating determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method. The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale ~~outside the CBG-covered area~~ has its octane rating posted in accordance with 16 CFR 306.

D. A marketer or jobber shall certify the octane rating to the transferee in accordance with 16 CFR 306.

E. Premium diesel shall be tested by the methodologies contained in and conform to the requirements of ~~certified to meet all performance properties under~~ Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d)

R3-7-716. Sampling and Access to Records

A. The Department ~~shall~~ may obtain motor fuel samples for testing from:

1. A transmix or production facility in the State of Arizona.
2. The Department may obtain motor fuel samples for testing at any point in the distribution system in the State of Arizona.
3. The Department may obtain samples of motor fuel blend components such as ethanol or biodiesel.
4. Samples obtained at a motor fuel dispensing site shall be obtained from the motor fuel dispenser available for sales to customers.
5. Samples obtained at a fleet fueling dispensing site shall be obtained from the dispenser used for fueling the fleet vehicles.

~~1. The same motor fuel dispenser used for sales to customers;~~
~~2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;~~
~~3. A bulk storage facility;~~
~~4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;~~
~~5. A transporter of motor fuel, including Arizona CBG or AZRBOB;~~
~~6. A final distribution facility;~~
~~7. A third party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;~~
~~8. An oxygenate blender or registered supplier; or~~
~~9. A transmix or production facility.~~

B. An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain records for five years ~~records~~ relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for Department inspection upon request.

R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Site Equipment

A. Hold-open latch. If an owner or operator of a motor fuel dispensing site has a dispensing device with a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.

B. Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site with a dispensing device from which diesel fuel is sold at retail shall ensure that the dispensing device has a nozzle spout with a diameter that conforms to SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."

C. Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:

1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or small nominal pore-sized filter.
2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends; and
3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter.

D. From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have a green grip guard.

Commented [RK11]: Suggest deleting and renumber following subsections. The state requirements for grades of gasoline are established in R3-7-704(B). Dispensing sites can rely on PTDs given them per 16 CFR 306.

Commented [RK12]: Infers that blenders are not producers which conflicts with definition of producer

Commented [RK13]: Covered above.

Commented [RK14]: Unnecessary, covered above.

Commented [RK15]: Unnecessary. PTDs fulfill this requirement.

Commented [RK16]:

R3-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends

A. ~~General~~ Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.
   a. A biofuel producer, biofuel supplier, or ~~person required to register with the EPA under 40 CFR 80, Subpart K or M,~~ blender shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
   c. ~~Consequences of failing~~ If a biofuel producer, biofuel supplier, or blender fails to register under subsection (A)(1)(a), the Director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.
      ~~i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and~~
      ~~ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R20-2-762.~~
   d. The Department shall maintain and make available to the public a list of all persons registered under this Section.
2. Reporting requirement.
   a. A person required to register under subsection (A)(1)(a) shall report to the Department by ~~the 15th of the month after producing or supplying biofuel or biofuel blend~~ January 30th of each year for the previous calendar year. The person shall:
      i. Report on a form or in a format prescribed by the Director;
      ii. Provide the ~~information specified in subsections (B) and (C), as applicable~~ total amount of biofuel or biofuel blend produced or supplied in each calendar month, including the total amount of each blend component;
      iii. Attest to the truthfulness and accuracy of the information submitted;
      iv. ~~Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article;~~ and
      ~~v.~~ Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.
   b. The Department shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.

~~3.~~B. Quality Assurance and Quality Control (QA/QC) program ~~requirement~~ requirements.

~~a.~~1. A ~~person required to register under subsection (A)(1)(a)~~ biofuel producer or blender shall ~~develop~~ implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona.;

~~b.~~2. ~~A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the~~ The QA/QC program ~~in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual~~ implemented by a biofuel or biodiesel producer shall include the following minimum requirements:

   ~~i.~~a. ~~Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer specific requirements~~ A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods;

   ~~ii.~~b. ~~Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied~~ A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;

   ~~iii.~~c. ~~Contains procedures that will be used to determine and document that operational quality requirements are met; and~~ The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Department within 24 hours of a request;

   ~~iv.~~d. ~~Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.~~ Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and

   e. A sample of each batch produced is retained and maintained for at least 60 days following production of the batch;

   ~~c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.~~

   ~~d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.~~

3. The QA/OC program implemented by a biofuel blender shall include the following minimum requirements:
   a. Retention of:
      i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;
      ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and
      iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;

b. A sampling and testing program that ensures or, as applicable, certifies that the biofuel blends produced meet applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods and shall be retained for 30 days following collection;

c. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;

d. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and

e. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Department; and

4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Department upon request.

5. In the event the Department identified biofuel or biofuel blends that do not meet ASTM requirements, the producer or blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

~~B. Specific requirements for producers or suppliers of E85.~~

~~1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:~~

~~a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:~~

~~i. Indicate E85 is not gasoline;~~

~~ii. Indicate E85 is intended for use only in a flexible fuel vehicle; and~~

~~iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle;" and~~

~~b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.~~

~~2. Additional requirement for producing E85 for sale in the CBG-covered area. A producer of E85 for sale in the CBG-covered area shall:~~

~~a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and~~

~~b. Ensure that the fuel ethanol used meets the standards in this Chapter.~~

~~3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:~~

~~a. The amount of fuel ethanol used to produce E85 in the previous month;~~

~~b. The amount of gasoline used to produce E85 in the previous month;~~

~~c. The total amount of E85 produced during the previous month;~~

~~d. The following fuel quality properties for the finished E85:~~

~~i. Appearance;~~

~~ii. American Petroleum Institute gravity;~~

~~iii. Organic chloride;~~

~~iv. Water content;~~

~~v. Vapor pressure; and~~

~~vi. Sulfur content.~~

~~4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:~~

~~a. The amount of E85 sold during the previous month; and~~

~~b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~

~~5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which E85 is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:~~

~~a. All samples of E85 are collected after any applicable blend component is added;~~

~~b. All samples of E85 are collected using approved ASTM methods;~~

~~c. Sampling is done at one of the following rates:~~

~~i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;~~

~~ii. If E85 is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;~~

~~iii. If E85 is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;~~

~~d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798;~~

~~e. Test results are used to certify the quality of the E85 produced;~~

f. ~~Sample handling and storage procedures are specified, and~~
g. ~~Sample retention time frames are specified.~~

6. ~~Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:~~
   a. ~~Notify the Director of the test results;~~
   b. ~~Take all reasonable steps to stop the sale of the non-compliant E85, and~~
   c. ~~Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.~~

C. ~~Specific requirements for producers or suppliers of biodiesel and biodiesel blends.~~

1. ~~A person shall not sell or offer or expose for sale:~~
   a. ~~Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751;~~
   b. ~~Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and~~
   c. ~~A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.~~
2. ~~The owner or operator of a motor fuel dispensing site shall ensure that:~~
   a. ~~Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:~~
      i. ~~Meets the labeling requirements established by A.R.S. § 41-2083(L);~~
      ii. ~~Is compatible with biodiesel or biodiesel blend, and~~
      iii. ~~Meets all requirements in this Chapter and A.R.S. § 41-2083; and~~
   b. ~~Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~
3. ~~Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG covered area. A producer of biodiesel or biodiesel blend for sale in the CBG covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.~~
4. ~~Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:~~
   a. ~~The total amount of biodiesel or biodiesel blend produced in the previous month;~~
   b. ~~The amount of biodiesel used to produce a biodiesel blend in the previous month;~~
   c. ~~The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:~~
      i. ~~Flash point;~~
      ii. ~~Water sediment;~~
      iii. ~~Sulfur content;~~
      iv. ~~Cold soak filterability;~~
      v. ~~Cloud point;~~
      vi. ~~Acid number;~~
      vii. ~~Free glycerin;~~
      viii. ~~Total glycerin; and~~
      ix. ~~Distillation, 90 percent; and~~
   d. ~~The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:~~
      i. ~~Sulfur content;~~
      ii. ~~Aromatic hydrocarbon content;~~
      iii. ~~Cetane index;~~
      iv. ~~Acid number;~~
      v. ~~Distillation, and~~
      vi. ~~American Petroleum Institute gravity.~~
5. ~~Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:~~
   a. ~~The amount of biodiesel or biodiesel blend sold during the previous month; and~~
   b. ~~A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~
6. ~~Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:~~
   a. ~~All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;~~
   b. ~~All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;~~
   c. ~~Sampling is done at one of the following rates:~~

~~i. If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;~~

~~ii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;~~

~~iii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;~~

~~d. All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;~~

~~e. Test results are used to certify the quality of the biodiesel or biodiesel blend produced;~~

~~f. Sample handling and storage procedures are specified; and~~

~~g. Sample retention time frames are specified.~~

~~7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.~~

~~8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:~~

~~a. Notify the Director of the test results;~~

~~b. Take all reasonable steps to stop the sale of the non-compliant biodiesel or biodiesel blend, and~~

~~c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.~~

~~D. Specific requirements for producers or suppliers of petroleum-based renewable diesel. A producer or supplier of petroleum based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:~~

~~1. Meets the standards in ASTM D975, and~~

~~2. Is identified as specified in R20-2-701.~~

C. Biofuel standards ~~and testing methodologies~~

1. Ethanol flex fuel. A person shall not sell, offer, or expose for sale ethanol flex fuel unless the following requirements are met:
   a. Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the ethanol flex fuel shall meets the requirements in ASTM D5798; and
   b. Ethanol flex fuel sold or offered for sale within the CBG-covered area:
      i. Uses Arizona CBG or AZRBOB as the hydrocarbon component to meet the requirements in ASTM D5798,
      ii. Uses fuel ethanol that meets the standards in this Chapter, and
      iii. Has a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).
2. Biodiesel and biodiesel blends. A person shall not sell, offer, or expose for sale biodiesel or biodiesel blends unless the following requirements are met:
   a. Biodiesel shall meets the requirements in ASTM D6751,
   b. A biodiesel blend containing ~~more than five percent but less than 20~~ a range from six percent up to and twenty percent biodiesel by volume shall meets the requirements in ASTM D7467, and
   c. If a biodiesel blend contains more than 20 percent biodiesel by volume, the diesel fuel used in the blend shall meets the requirements in ASTM D975 and the biodiesel blend stock shall meets the requirements in ASTM D6751.
3. Non-compliant biofuel and biofuel blends. If a test result for a biofuel or biofuel blend shipped from a facility indicates the biofuel or biofuel blend does not comply with the requirements of this Chapter, the biofuel producer or blender shall:
   a. Notify the Director within 24 hours of identification of the non-compliant biofuel or biofuel blend,
   b. Immediately take all reasonable steps to stop sale of the non-compliant biofuel or biofuel blend, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and prevent future occurrences of noncompliance.

Commented [RK17]: Methodiologies have not been described

Commented [RK18]: Cardinal or ordinal numbers???

D. Requirements for motor fuel dispensing sites.

1. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that:
   a. All dispensers are labeled as required under R3-7-705(E);
   b. After September 30, 2018, all retail ethanol flex fuel dispensers are equipped with nozzles having yellow grip guards and no other product nozzles have yellow grip guards;
   c. Any motor fuel dispenser from which ethanol flex fuel is dispensed is compatible with ethanol flex fuel and meets the requirements of this Chapter and A.R.S. § 3-3433; and
   d. Any ethanol flex fuel sold, offered or exposed for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1) or the Environmental Protection Agency under 40 CFR 80, subparts K or M.
2. The owner or operator of a motor fuel dispensing site from which biodiesel or biodiesel blend is dispensed shall ensure that:
   a. All dispensers are labeled as required under R3-7-705(D);
   b. All dispensers from which biodiesel or biodiesel blend is dispensed are compatible with biodiesel or biodiesel blend and meet the requirements of this Chapter and A.R.S. § 3-3433; and
   c. Any biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).

E. Exemptions.

1. A biofuel producer, biofuel supplier, or blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or blender located within Arizona is not required to register under subsection (A)(1)(a);
2. Diesel fuel containing five percent or less biodiesel is exempt from this Section if the following conditions are met:
   a. The diesel fuel meets the standards of ASTM D975; and
   b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
3. A biofuel producer, biofuel supplier, or blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.
4. Gasoline containing up to 10 percent ethanol is exempt from this section.

R3-7-719. Repealed

R3-7-720. Renumbered

R3-7-721. Renumbered

R3-7-722. Reserved
through
R3-7-748. Reserved

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to ~~R20-2-750~~ R3-7-750 through ~~R20-2-762~~ R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the Director under A.R.S. § ~~41-2124~~ 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in ~~R20-2-759~~ R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the Director under ~~R20-2-750~~ R3-7-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody~~, but not ownership,~~ of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter or other terminal..

Commented [RK19]: Grey area. May already have ownership, so technically not "accepting".

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in ~~R20-2-751(A)~~ R3-7-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I), and meets the requirements in:

~~R20-2-751(A)~~ R3-7-751(A) beginning April 1 through October 31 of each year, and

~~R20-2-751(B)~~ R3-7-751(B) beginning November 1 through March 31 of each year.

"Winter" means November 1 through March 31.

R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the Director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
   1. A refiner that produces Arizona CBG or AZRBOB;
   2. An importer that imports Arizona CBG or AZRBOB;
   3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
   4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the Director and include the following information:
   1. Business name, business address, and contact name or position title and telephone number;
   2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
   3. For each refinery, oxygenate blending facility, or importer:
      a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and

b. If an independent laboratory is used to meet the requirements of ~~R20-2-752(F)~~ R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;

4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the Department or its authorized agent to collect samples and access records as provided in ~~R20-2-716~~ R3-7-716.

C. A person registered under subsection (B) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.

E. The Department shall maintain a list of all registered suppliers.

R3-7-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.

1. Sulfur: ~~500~~ 95 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: 70-30 percent volume.
5. E300: 100-70 percent volume.
6. Maximum vapor pressure:
   a. October: 9.0 psi.
   b. November 1 - March 31: 9.0 psi.
   c. April: 10.0 psi.
   d. May: 9.0 psi.
   e. June 1 - September 30: 7.0 psi.
   f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in ~~R20-2-708(B)~~ R3-7-708(B), during April only.
7. Oxygen and oxygenates:
   a. Minimum content:
      i. November 1 - March 31: 10 percent fuel ethanol by volume. If A.R.S. § ~~41-2124(E)~~ 3-3493(E) petition in effect: 2.7 percent oxygen by weight as approved by the Director.
      ii. April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § ~~41-2122~~ 3-3491.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: ≥ 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.

1. Sulfur: 80 ppm by weight (max),
2. Aromatics: 30% by volume (max),
3. Olefins: 10% by volume (max),
4. 90% Distillation Temp. (T90): 330° F (max),
5. 50% Distillation Temp. (T50): 220° F (max),
6. Vapor Pressure: 9.0 psi (max), and
7. Oxygenate - Ethanol;
   a. Minimum oxygenate content - 10 percent fuel ethanol by volume;
   b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492; and
   c. Alternative minimum fuel ethanol content may be used if approved by the Director under A.R.S. § ~~41-2124(D)~~ 3-3493(D).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D4806 and the following:

1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

Commented [RK20]: Should be able to change this even though in conflict with SIP . . . 95 is EPA downstream cap . . . might consider 80 ppm to match wintertime requirements below.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with ~~R20-2-760~~ R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:

1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under ~~R20-2-752~~ R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in ~~R20-2-702~~ R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Department approves using the criteria stated in ~~R20-2-759~~ R3-7-759(D).

Commented [RK21]: Should we be more precise??

H. Certification and use of Predictive Model for alternative PM gasoline formulations.

1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the Director by either:
   a. Submitting to the Director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
   b. Notifying the Director, on a form prescribed by or in a format acceptable to the Director, of:
      i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. A registered supplier shall deliver the certification required under subsection (H)(2) to the Director before transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
   a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
   b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
      i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
      ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
      iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
   c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).
   d. If a registered supplier notifies the Director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:

i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or

ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations.

A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under ~~R20-2-752~~ R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
   a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), or
   b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NO_x Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period.

L. Consequence of failure to comply with averages.

1. In addition to a penalty under ~~R20-2-762~~ R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
   a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;
   b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.
2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
   a. The registered supplier submits a compliance plan to the Director that includes:
      i. An implementation schedule for actions to correct noncompliance, and
      ii. Reporting requirements that document implementation of the compliance plan,
   b. The Director approves the plan,
   c. The registered supplier implements the plan, and
   d. The registered supplier achieves compliance.
3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.
   a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.
   b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period.

4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under ~~R20-2-760~~ R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NOx survey failure. Each time a NOx survey conducted under ~~R20-2-760~~ R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:

1. >27 percent for the VOC emissions reduction percentage, May 1 - September 15, Table 1, column C; and
2. >6.8 percent for the NOx emissions reduction percentage, May 1 - September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:

1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

R3-7-751.01. Repealed

R3-7-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. B. A registered supplier shall make the certification on a form or in a format prescribed by the Director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under ~~R20-2-759~~ R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the Director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

Commented [RK22]: oops

C. Recordkeeping and records retention.

1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
   a. Sample date;
   b. Identity of blend or product sampled;
   c. Container or other vessel sampled;
   d. The final blend or shipment volume; and
   e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under ~~R20-2-759~~ R3-7-759.
2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the Director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in ~~R20-2-751~~ R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
3. A registered supplier shall provide to the Director any records maintained by the registered supplier under this Section within 20 days of a written request from the Director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the Director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of ~~R20-2-751~~ R3-7-751, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the Director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with ~~R20-2-759~~ R3-7-759 and the data generated by the registered supplier's

laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the original quality objectives. The Director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
   a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in ~~R20-2-759~~ R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
   b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      i. An independent laboratory shall collect a representative sample from each batch;
      ii. The Director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
      iii. The independent laboratory shall, for each sample identified by the Director or designee, analyze the sample using the methodology specified in ~~R20-2-759~~ R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The Director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the Director or designee. The registered supplier shall submit a duplicate of the sample to the Director within 24 hours of the written request.
3. Designation of independent laboratory.
   a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
   b. A registered supplier shall identify the designated independent laboratory to the Director under the registration requirements of ~~R20-2-750~~ R3-7-750.
   c. A laboratory is considered independent if:
      i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
      ii. The laboratory does not have any interest in any registered supplier, and
      iii. The registered supplier does not have any interest in the designated laboratory.
   d. Notwithstanding the restrictions in subsection (F)(3)(c), the Director shall consider a laboratory independent if it is owned or operated by a pipeline which is owned or operated by four or more registered suppliers.
   e. A registered supplier shall ~~not~~ discontinue use of a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4 upon notification by the Department.
4. A registered supplier shall ensure that its designated independent laboratory:
   a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      i. The producer's or importer's assigned batch number for the batch sampled;
      ii. The volume of the batch;
      iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      iv. The date and time the batch became Arizona CBG or AZRBOB;
      v. The date and time the sample is collected;
      vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
   b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the Director for up to 180 days;
   c. Submits to the Director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
      i. The results of the independent laboratory's analyses for each fuel property, and
      ii. The information specified in subsection (F)(4)(a) for each sample; and
   d. Supplies to the Director, upon request, a duplicate of the sample retained in accordance with R3-7-752(F)(4)(b).

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the Director by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.

Commented [RK23]: Must they owners be registered suppliers?? Why not independent if owned by four or more entities??

Commented [RK24]: If the Department has no knowledge of laboratory ineligibility under this clause, how is the registered supplier supposed to know??

Commented [RK25]: Seems strange to have a Director request for a sample in the quarterly report section. Labs keep samples 45 days; suppliers keep samples 60 days. Samples in the report are up to 105 days old

1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
   a. Sulfur content: 25 ppm by weight,
   b. Aromatics: 2.7% by volume,
   c. Olefins: 2.5% by volume,
   d. Fuel ethanol: 0.4% by volume,
   e. Vapor pressure: 0.3 psi,
   f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   h. E200: 2.5% by volume,
   i. E300: 3.5% by volume, or
   j. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
   a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
   b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

R3-7-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
   1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Department under ~~R20-2-750~~ R3-7-750; and
   2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the Director.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

D. A pipeline shall provide the Director with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the Director by fax within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the Director ~~by fax~~ within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable.

Commented [RK26]: Probably unnecessary to list all of the communication avenues available

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the Director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Department. The Director shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in ~~R20-2-752~~ R3-7-752 and oxygenate blenders in ~~R20-2-755~~ R3-7-755, as applicable.

I. A pipeline is not liable under ~~R20-2-761~~ R3-7-761 if it follows all of the procedures in this Section.

R3-7-754. Downstream Blending Exceptions for Transmix

A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. One of two methods shall be used to measure the transmix as it is blended into the product stream:
   1. Meters, calibrated at least twice each year; or
   2. Tank gauge as per API Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Department. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.
   1. Determining whether AZRBOB complies with Arizona CBG standards.
      a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in ~~R20-2-759~~ R3-7-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Department shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding fuel ethanol to the AZRBOB.
      b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the fuel ethanol added to the representative sample under subsection (A)(1)(a) is representative of the fuel ethanol the registered supplier reasonably expects will be subsequently added to the AZRBOB.
   2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under ~~R20-2-751~~ R3-7-751 by adding the minimum amount of fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Department shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.
   1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
      a. The transferee is a registered oxygenate blender and will add fuel ethanol in the amount (or within the range of amounts) designated in ~~R20-2-757~~ R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
      b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the amount (or within the range of amounts) of fuel ethanol designated in ~~R20-2-757~~ R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
   2. A person shall not sell or supply Arizona CBG from a final distribution facility if the amount or range of amounts of fuel ethanol designated in ~~R20-2-757~~ R3-7-757 has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:
   1. Fuel ethanol in the amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
   2. Other AZRBOB for which the same fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.
   3. Use as the hydrocarbon component of ethanol flex fuel.
   4. Downgrade to conventional fuel or transmix

Commented [RK27]: Note this section prohibits remediation of over and under oxygenated product at a motor fuel dispensing site or fleet vehicle fueling facility described in R3-7-710

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
   1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
   2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in ~~R20-2-759~~ R3-7-759...;" and

3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:

1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the Director under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in ~~R20-2-759~~ R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the Director to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the Director, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a Department official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the Director within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the Director under subsection (G) and the results are accurate;
    c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    d. Identification of the area from which the samples were collected;
    e. Address of each motor fuel dispensing site from which a sample was collected;
    f. Dates on which the samples were collected;
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. Name and address of each laboratory at which the samples were analyzed;
    i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    j. Number of samples collected at each motor fuel dispensing site; and
    k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the Director. The Director shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the Director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:

1. Submit the plan to the Director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the Director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.

1. Requirement to add fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB in the amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending fuel ethanol with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in ~~R20-2-759~~ R3-7-759.
3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by

reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.

a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"

b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in ~~R20-2-759~~ R3-7-759...;" and

c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."

4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.

a. An oxygenate blender that produces Arizona CBG by blending fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:

i. Obtain a flow proportional composite sample after the addition of fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;

ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in ~~R20-2-759~~ R3-7-759; and

iii. Determine the volume of the resulting Arizona CBG.

b. If the test results for the Arizona CBG indicate that it does not contain the amount of fuel ethanol specified by the ranges of the applicable test methods, the oxygenate blender shall:

i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;

ii. Begin an investigation to determine the cause of the noncompliance;

iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and fuel ethanol, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and

iv. Notify the Director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.

c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the Director determines that the corrective action has remedied the noncompliance.

5. Recordkeeping and records retention.

a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:

i. Sample date,

ii. Identity of blend or product sampled,

iii. Container or other vessel sampled,

iv. Volume of final blend or shipment,

v. Oxygen content as determined under ~~R20-2-759~~ R3-7-759, and

vi. Results from all testing.

b. The Director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in ~~R20-2-751~~ R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards in ~~R20-2-751~~ R3-7-751.

c. Within 20 days of the Director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the Director shall deem that the blend or shipment of Arizona CBG violates ~~R20-2-751~~ R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards and limits under ~~R20-2-751~~ R3-7-751.

6. Notification requirement. An oxygenate blender shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the Director for approval at least three months before transporting Arizona CBG. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of ~~R20-2-752(F)~~ R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).

8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in ~~R20-2-752(F)~~ R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).

9. Within 24 hours of the Director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

Commented [RK28]: Still necessary???

R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the Director:
   1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
   2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
   3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in ~~R20-2-751(A)~~ R3-7-751(A) or (B) if the person obtains prior written approval from the Director based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Department.

R3-7-757. Product Transfer Documentation; Records Retention

A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:
   1. Volume of Arizona CBG or AZRBOB being transferred;
   2. Location of the Arizona CBG or AZRBOB at the time of transfer;
   3. Date of the transfer;
   4. Product transfer document number;
   5. Identification of the gasoline as Arizona CBG or AZRBOB;
   6. Minimum octane rating of the Arizona CBG or AZRBOB;
   7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the minimum quantity of fuel ethanol contained in the Arizona CBG;
   8. If the product transferred is AZRBOB for which fuel ethanol blending is intended:
      a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of fuel ethanol";
      b. ~~Designation of the AZRBOB as suitable for blending with fuel ethanol;~~
      c. Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent fuel ethanol and weight percent oxygen content; and
      d. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for fuel ethanol amount or range of amounts; and
   9. The final destination:
      a. When a terminal is the transferor, the owner or the operator of the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
      b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
      c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.

E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.

F. As transferor or transferee, a ~~A~~ registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents involving every transaction of Arizona CBG or AZRBOB for 60 months. Documents for the current and previous month shall be maintained onsite. ~~for each shipment of Arizona CBG or AZRBOB transferred during the 60 months he most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days~~

Commented [RK29]: Font correction to 9

Commented [RK30]: Serves no purpose . . . delete

Commented [RK31]: Needs clarification

Commented [RK32]: Suggest re-write

~~preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.~~

G. When a person transfers custody or title of fuel ethanol that is intended for use as a blend component in ~~AZRBOB or~~ Arizona CBG, the person shall provide the transferee a document that prominently states that the fuel ethanol complies with the standards for fuel ethanol intended for use as a blend component in ~~AZRBOB or~~ Arizona CBG.

H. Upon request by the Director or designee, a person shall present product transfer documents to the Department within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

Commented [RK33]: Ethanol is not a blend component of AZRBOB

R3-7-758. Repealed

R3-7-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure fuel ethanol in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. A test method that the Department determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Department has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Department shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Department shall approve a proposed test method only if the Department determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

Commented [RK34]: Delete if SIP Approved

Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)[A]	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) [1.133]
Olefins	V%	D1319-02a (2003)	0.32 $(x)^{0.5}$	D6550-00 (2005) if correlated to D1319	0.32 $(X)^{0.5}$; Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004)[B]	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 $(x)^{0.92}$ wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

Commented [RK35]: Why list Benzene if uncontrolled?? Is it because it is probably a requirement to pass a CARB Predictive Model?? If so, is AZ claiming authority to regulate this toxic?? EPA issues here

[A] A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).
[B] A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).
Footnotes:
1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."
2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

R3-7-760. Compliance Surveys

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under ~~R20-2-751~~ R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the Director. The Director shall approve a compliance survey program plan if it:
   1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
   2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the Director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the Director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
   1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
   2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
   3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in ~~R20-2-759~~ R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
   4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
   5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the Director to ensure the validity of analysis results.

D. If the Director determines that a sample used in a compliance survey does not comply with ~~R20-2-751~~ R3-7-751 or another requirement under this Article, the Director shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements:
   1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in ~~R20-2-702~~ R3-7-702;
   2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
   3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted between May 1 and September ~~15~~ 16 as follows:
   1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in ~~R20-2-702~~ R3-7-702; and
   2. The CBG-covered area fails the NOx series of compliance surveys conducted between May 1 and September ~~15~~ 16 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The Director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:
   1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
      a. The surveyor shall not be an employee of any registered supplier,
      b. The surveyor shall not have an obligation to or interest in any registered supplier, and
      c. The registered supplier shall not have an obligation to or interest in the surveyor;
   2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen

Commented [RK36]: Do we have the same statement applicable for non-compliance survey fuels, or should this be stricken as an understood course of action??

Commented [RK37]: Alternatively, use FROM May 1 THROUGH September 15 as in other sections

Commented [RK38]: ditto

Commented [RK39]: Aren't we looking for E200 & E300 during summertime compliance surveys??

(by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;

3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the Director, within 30 days following submission of the survey report required under subsection (G)(6);
5. Requires that the surveyor permit a Department official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the surveyor to submit a report of each survey to the Director within 30 days after sampling for the survey is completed that includes the following information:
   a. Name of the person conducting the survey;
   b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
   c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
   d. Identification of the area from which survey samples were selected;
   e. Dates on which the survey was conducted;
   f. Address of each facility at which a sample was collected, and the date of collection;
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. Name and address of each laboratory at which samples were analyzed;
   i. Description of the method used to select the facilities from which a sample was collected;
   j. Number of samples collected from each facility;
   k. Justification for excluding a collected sample from the survey, if one was excluded; and
   l. Average VOC and NOx emissions reduction percentage.

H. An independent surveyor shall begin each survey on a date selected by the Director. The Director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.

I. To obtain the Director's approval of a compliance survey program plan, the person seeking approval shall:
   1. Submit the plan to the Director no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
   2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.

J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the Director a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with ~~R20-2-751~~ R3-7-751, the following are liable for the violation:
   1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
   2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
   3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.
   1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
      a. That the violation was not caused by the person or person's employee or agent;
      b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
      c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.
   2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
      a. A violation of law other than A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 6, this Article, or an act of sabotage or vandalism;

b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or

c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.

3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a service station or fleet owner facility, a person shall present evidence:

1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in ~~R20-2-751~~ R3-7-751; and

2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in ~~R20-2-751~~ R3-7-751:

a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and

b. The person remedies the violation as soon as practicable.

c. In situations where the noncompliance was discovered after beginning of transport in a pipeline, section 2(a) shall not apply. Delivery of the noncompliant fuel shall be coordinated through the Department to determine the applicability of section 2(b).

Commented [RK40]: Open to discussion on this wording .

R3-7-762. Penalties

Any person who violates any provision of this Article is subject to the following:

1. Prosecution for a Class 2 misdemeanor under A.R.S. § ~~41-2113(B)(4)~~ 3-3473(B)(4);
2. Civil penalties in the amount of $500 per violation under A.R.S. § ~~41-2115~~ 3-3475; and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § ~~41-2066(A)(2)~~ 3-3415(A)(2).

Table 1. Type 1 Arizona CBG Standards

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 - Sept. 15	≥ 27.5	≥ 29.0	≥ 25.0	N/A
NOx Emission Reduction (%) May 1 - Sept. 15	≥ 5.5	≥ 6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	≥ 0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	N/A 0.0*	N/A N/A	N/A 0.0	N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	N/A 0.0	N/A N/A	N/A 0.0	N/A ****

* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § ~~41-2122~~ 3-3491.
** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility.
*** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31.
**** As specified in A.R.S. § ~~41-2122~~ 3-3491.

Department of Weights and Measures

Table 2. Type 2 Arizona CBG Standards

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol** November 1 - March 31	10% fuel ethanol**	–	10% fuel ethanol**	% by vol.
April 1 - October 31		–		
The maximum oxygen content EtOH year around			4.0	% by weight

* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I) for the use of the PM.
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.
A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through March 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the Director under A.R.S. § ~~41-2124(D)~~ 3-3493.
NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

Table 3. **Repealed**

ARTICLE 8. REPEALED

R3-7-801. **Repealed**

R3-7-802. **Repealed**

R3-7-803. **Repealed**

R3-7-804. **Repealed**

R3-7-805. **Repealed**

R3-7-806. **Repealed**

R3-7-807. **Repealed**

R3-7-808. **Reserved**

R3-7-809. **Repealed**

R3-7-810. **Repealed**

R3-7-811. **Repealed**

R3-7-812. **Repealed**

ARTICLE 9. GASOLINE VAPOR CONTROL

R3-7-901. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:

1. Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA-450/3-91-022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. The following CARB test procedures:
   a. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   b. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   c. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   d. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   e. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

h. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-902. Exemptions

A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with ~~R20-2-913~~ R3-7-913 or that is subject to A.R.S. § ~~41-2132~~ 3-3512, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.

B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § ~~41-2135(B)~~ 3-3415(B) may obtain an exemption by submitting a written request to the Department attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § ~~41-2135(B)~~ 3-3415(B). By the 15th of each month, beginning the month after the Department approves the exemption, the person shall submit a written throughput report to the Department. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Department deems the exemption void.

C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the Department. The Department shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:
   1. Purchase and sale of diesel fuel, and
   2. State lottery sales net commissions and incentives.

D. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

R3-7-903. Equipment and Installation

A. A person subject to A.R.S. § ~~41-2135~~ 3-3415 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with ~~R20-2-913~~ R3-7-913.

B. The Department shall reject a vapor recovery system or component from future installation if:
   1. Federal regulations prohibit its use;
   2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in ~~R20-2-901~~ R3-7-901; or
   3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

C. The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under ~~R20-2-904~~ R3-7-904.

D. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

E. A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:
   1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage II vapor recovery system;
   2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
   3. Replacing a Department-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the Department a written change order to an authority to construct plan approval on a form provided by the Department if a modification of the approved vapor recovery system or component is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
   1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;

2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
5. The application fee specified under ~~R20-2-906~~ R3-7-906.

D. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
   1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
   2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
   3. An authority to construct plan approval is not transferable.

E. The Department shall deny an authority to construct plan for any of the following reasons:
   1. Providing incomplete, false, or misleading information; or
   2. Failing to meet the requirements stated in this Chapter.

F. If excavation is involved, the Department may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete. The Department shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to ~~R20-2-905~~ R3-7-905.

H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the Department at a time approved by the Department and include any of the following relevant to the specific vapor recovery system installed:
   1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
   2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in ~~R20-2-901(1)~~ R3-7-901(1) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in ~~R20-2-901(2)~~ R3-7-901(2) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Department shall compute combined tank vapor space for manifolded systems;
   3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
   4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
   5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
   6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
   7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
   8. Procedures specified by a manufacturer for testing the vapor recovery system.

B. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
   1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
   2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
   3. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

R3-7-906. Fee

A. The authority to construct plan approval fee is $250.

R3-7-907. Operation

A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:

1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
2. When more than 1/4 of the cone is missing for vapor assist systems having bellowless nozzles with flexible vapor deflecting cones;
3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;
4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;
8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
10. A dispenser mounted vacuum pump that is not functioning;
11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
    b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
    c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;
    d. Does not swivel at the hose/nozzle connection; or
    e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;
12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;
13. The stage I installation is not properly installed or maintained, in that:
    a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;
    b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
    c. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or
    d. A fill tube is missing, not sealed, has holes, broken or damaged overfill preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;
14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;
15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
17. A vacuum assist system with an inoperative central vacuum unit;
18. A vacuum assist system with an inoperative vapor processing (burner) unit;
19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or

20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.

E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § ~~41-2135(E)~~ 3-3515(E) and this Article.

F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the Department by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the Department.

G. For proper operation of a stage I system, under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-908. Training and Public Education

A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated and maintained properly in accordance with the manufacturer's specifications and CARB certification. The operator shall maintain documentation of this training on-site and make the documentation available to the Department on request.

B. In addition to the information required in A.R.S. § ~~41-2135(E)~~ 3-3515(E), an operator of a gasoline dispensing site with stage II vapor recovery shall display a Department telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal signs, and from up to 6 feet away for permanent (non-decal) signs. Decals shall be located on the upper 60% of each face of each dispenser.

R3-7-909. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2135(B)~~ 3-3515(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the Department as required under ~~R20-2-902(B)~~ R3-7-902(B). If any throughput requirement provided in A.R.S. § ~~41-2135(B)~~ 3-3515(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.

D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

R3-7-910. Annual Inspection and Testing

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in ~~R20-2-905(A)(1)~~ R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).

E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Department issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

R3-7-911. Compliance Inspections

The Department shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in ~~R20-2-910~~ R3-7-910.

R3-7-912. Enforcement

If the Department finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-913. Stage II Decommissioning

A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:
   1. If the owner or operator holds a license issued by the Department numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
   2. If the owner or operator holds a license issued by the Department numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the Department for approval no later than December 31, 2015.
   1. An owner or operator that holds licenses issued by the Department for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
   2. An owner or operator that holds licenses issued by the Department for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).

C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):
   1. The business name and mailing address on all licenses;
   2. The name and telephone number of an individual with whom the Department can communicate;
   3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
   4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
   5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
      a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
      b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.

D. The Department shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The Department shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The Department may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;

E. The owner or operator of a gasoline dispensing site that is exempt under ~~R20-2-902~~ R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;

F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the Department, is submitted to the Department at least 10 days before the planned decommissioning and includes the following information:
   1. Name of the owner or operator of the gasoline dispensing site,
   2. Address of the gasoline dispensing site,
   3. Name of the decommissioning contractor,
   4. Decommissioning dates,
   5. Name of the vapor testing registered service representative, and
   6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.

G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the Department receives the changed information at least 24 hours before the scheduled start of decommissioning.

H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in ~~R20-2-901(4)~~ R3-7-901(4) with the following exceptions:
   1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
   2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and

3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in ~~R20-2-1005(A)(1)~~ R3-7-1005(A)(1).

I. The decommissioning contractor shall:
   1. Complete a Decommissioning Checklist using a form or format provided by the Department,
   2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
   3. Submit a copy of the completed Decommissioning Checklist to the Department within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.

J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under ~~R20-2-910~~ R3-7-910 but shall be subject to the initial inspection and testing prescribed under ~~R20-2-1005~~ R3-7-1005 within 60 days after decommissioning is complete.

K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.

L. The Department shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § ~~41-2115~~ 3-3475 on the owner or operator of the gasoline dispensing site.

ARTICLE 10. STAGE I VAPOR RECOVERY

R3-7-1001. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:

1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-1002. Exemptions

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with ~~R20-2-913~~ R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Department, using a form prescribed by the Department, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) was exceeded, the Department shall deem the exemption void.

R3-7-1003. Equipment and Installation

A. The Department shall reject a vapor recovery system or component from future installation if:
   1. Federal regulations prohibit its use;
   2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in ~~R20-2-1001~~ R3-7-1001; or
   3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under ~~R20-2-1004~~ R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Department as required under A.R.S. § ~~41-2132~~ 3-3512.

C. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
   1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage I vapor recovery system;
   2. Modifying, adding, or replacing underground vent piping; or
   3. Conducting construction under ~~R20-2-913(H)(2)~~ R3-7-913(H)(2).

B. A person shall file with the Department a written change order, using a form provided by the Department, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
   1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
   2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
   3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
   4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
   5. The application fee specified under ~~R20-2-1006~~ R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
   1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
   2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
   3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
   4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
   5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
   6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
   7. Has tank vent pipes with a minimum inside diameter of:
      a. Two inches if the pipe is not manifolded, or
      b. Three inches from the point of manifold if the pipe is manifolded;
   8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
   9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
   10. Has a one-eighth inch threaded tap on the vent pipe between six and eight feet above ground level;
   11. Has risers into gasoline storage tanks that are capped with UL-approved caps;
   12. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
   13. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY *88*/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and
   14. Complies with other requirements outlined in the authority to construct permit.

E. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.
   1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
   2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
   3. An authority to construct plan approval is not transferable.

F. The Department shall deny an authority to construct plan for any of the following reasons:
   1. Providing incomplete, false, or misleading information; or
   2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the Department may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The Department may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to ~~R20-2-1005~~ R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-1005. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the Department at a time approved by the Department and include the following tests:
   1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
   2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
   3. A Tie-Tank test using CARB TP-201.3C test procedure; and
   4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.

B. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
   1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
   2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
   3. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.

R3-7-1006. Fee

The authority to construct plan approval fee is $250.

R3-7-1007. Operation

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Department approval under A.R.S. § ~~41-2132~~ 3-3512 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:
   1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
   2. Vent pipes do not meet the CARB-specified paint color code specified in ~~R20-2-1004(D)(13)~~ R3-7-1004(D)(13);
   3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
      a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
      b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
      c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or

d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;

4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.

E. For proper operation of a stage I system under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-1008. Training and Public Education

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training on-site and make the documentation available to the Department on request.

R3-7-1009. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under ~~R20-2-1007~~ R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2132(B)~~ 3-3512(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Department within 24 hours after request. The owner or operator shall submit to the Department the throughput information required under ~~R20-2-1002(B)~~ R3-7-1002(B). If any throughput requirement provided in A.R.S. § ~~41-2132(B)~~ 3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under ~~R20-2-1010~~ R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under ~~R20-2-913~~ R3-7-913 shall maintain a copy of the decommissioning checklist required under ~~R20-2-913(I)~~ R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

R3-7-1010. Annual Testing and Inspection

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in ~~R20-2-1005(A)(1)~~ R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the Department may perform or may require registered service representatives to perform additional tests under ~~R20-2-1005(A)(4)~~ R3-7-1005(A)(4) during the annual inspection and testing. The Department shall provide registered service agencies with six months' notice before requiring additional annual testing under ~~R20-2-1005(A)(4)~~ R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

G. A person shall notify the Department when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Department approves the reinspection date and time.

H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Department issues to registered service agencies.

I. A person that cancels an annual inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the

inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

R3-7-1011. Compliance Inspections and Additional Test Methods

The Department shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in ~~R20-2-1010~~ R3-7-1010.

R3-7-1012. Enforcement

If the Department finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-1013. Stage II Vapor Recovery

If the Department identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the Department shall issue an administrative order and civil penalty under A.R.S. § ~~41-2115~~ 3-3475 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § ~~41-2115~~ 3-3475.

Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

Ullage (gallons)	Minimum Pressure after Five Minutes (Inches Water Column)
500	0.73
550	0.80
600	0.87
650	0.93
700	0.98
750	1.03
800	1.07
850	1.11
900	1.15
950	1.18
1000	1.21
1200	1.32
1400	1.40
1600	1.46
1800	1.51
2000	1.56
2400	1.62
2600	1.65
2800	1.67
3000	1.69
3500	1.73
4000	1.76
4500	1.79
5000	1.81
6000	1.84
7000	1.86
8000	1.88
9000	1.89
10000	1.90
15000	1.93
20000	1.95
25000	1.96

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:40 PM
To: Roger Fisk
Subject: FW: Draft Weights and Measures Rules - Workshop July 8
Attachments: WM Rulemaking Entire Title 6-1-16_ChevronComments.rtf; CFR-2016-title16-vol1-part306.pdf

From: SHEEHAN, MATTHEW J [mailto:MSHEEHAN@chevron.com]
Sent: Thursday, July 21, 2016 2:32 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: RE: Draft Weights and Measures Rules - Workshop July 8

Hi Michelle,

Thank you for the opportunity to comment on Arizona Weights and Measures Services rulemaking. I've marked up a copy of the proposed rule changes, and included some additional comments in the mark-up. During the meeting, we offered to provide the follow information:

- List of the most current standards that could be used in ss R3-7-702 – I've updated the references in the attached mark-up copy.
- Provide the exact FTC language for PTD and records retention. I've included the FTC language contained 16 CFR 306, effective July 14, 2016. I am available to review this with you in further detail.

Chevron's Comments to the proposed rules:

R3-7-702. Material Incorporated by Reference
Updated to most recent publications of ASTM and SAE specifications
(A)(1) The most recent update to 16 CFR 306 was published on January 14, 2016, however we would like to note that the effective date of the rule was July 14, 2016. It may add clarity to list the effective date of the rule.

R3-7-704. Price and Grade Posting on External Signs
(A)(6) Adds clarity that fuels meeting ASTM D975, including up to B5, may be labeled as "Diesel"
(A)(7) Updated Arizona Code subsection reference

R3-7-705. Retail Dispenser Price Notification and Labeling
(A)(4) Allows for dispensers that can display multiple prices to reset the per gallon price to the highest price, until an action by the consumer (such as inserting club card or phone #) results in displaying a lower price. Additional comments are in the marked up copy.
(C)(5) Suggest a reasonable limit is specified. Detectable lower limits by ASTM D5599 = 0.1%wt. ASTM D4814 defines a gasoline-ethanol blend as gasoline along with a substantial amount (more than 0.35% by mass oxygen) of ethanol. Ethanol free gasoline could be added to a tank truck containing a heel of E10 and the resulting gasoline could have a detectable level of ethanol.

R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
(A)(9)(c) Per A.R.S . 3433.L. PTD disclosure is not required unless biodiesel blends contain more than 5% biodiesel.
(A)(9)(d), (e) Aligns with FTC requirements for biomass-based diesel labeling

R3-7-713. Motor Fuel Storage Tank Labeling
(A)(8) In alignment with ASTM D975, allows blends of biodiesel or renewable diesel up to 5% by volume to be labeled as diesel

R3-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends
(C)(2)(b) specify "percent by volume"
(E)(2) specify "percent by volume"

Please feel free to contact me with any questions, or if you'd like to discuss our comments in further detail.

Thank you,

Matt Sheehan
State Fuels Regulations
MSheehan@Chevron.com

Chevron U.S.A. Inc
Downstream Technology
6001 Bollinger Canyon Road
San Ramon, CA 94583
Tel 925 842 5393

From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Friday, June 10, 2016 11:54 AM
To: Michelle Wilson
Cc: Aaron Thompson; Damien DeSantiago; Jeff Grant; Mark Killian; Michele Mellott; Roger Fisk; Sara Kumaraswamy
Subject: [**EXTERNAL**] Draft Weights and Measures Rules - Workshop July 8

All, the Weights and Measures Services Division will hold a workshop to review proposed changes that are included in the attached draft rule:

July 8, 9:00 a.m.
Department of Agriculture
1688 W. Adams St., Conference Room 206
Phoenix, AZ 85007

The stakeholder meeting will also be available by webinar/phone. Attached is the agenda and webinar information.

9:00 a.m. – Proposed Changes to Article 5, Weighmaster Program
Proposed Changes to Articles 1 through 4, 6, 9 and 10

1:00 p.m. – Proposed Changes to Article 7, Motor Fuels

Please let me know if you have any questions. Thank you,

Note: My email address has changed, please update it in your records and address book to mwilson@azda.gov.

Michelle Wilson
Environmental Program Manager
Arizona Department of Weights and Measures
1688 W. Adams Street, Phoenix, AZ 85007-2606
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

TITLE 3. ARIZONA DEPARTMENT OF AGRICULTURE
CHAPTER 7. DEPARTMENT OF AGRICULTURE
WEIGHT AND MEASURES SERVICES DIVISION
ARTICLE 1. ADMINISTRATION AND PROCEDURES

Section	
R3-7-101.	Definitions
R3-7-102.	Metrology Laboratory Testing and Calibration Fees
R3-7-103.	Licensing and Fees
R3-7-104.	Administrative Enforcement Action
R3-7-105.	Repealed
R3-7-106.	Repealed
R3-7-107.	Repealed
R3-7-108.	Time-frames for Licenses, Renewals, and Authorities to Construct
R3-7-109.	Administrative Hearing Procedures
R3-7-110.	Motion for Rehearing or Review
R3-7-111.	Repealed
R3-7-112.	Repealed
R3-7-113.	Renumbered
R3-7-114.	Repealed
R3-7-115.	Renumbered
R3-7-116.	Renumbered
R3-7-117.	Renumbered
Table 1.	Time-frames (in days)

ARTICLE 2. COMMERCIAL DEVICES

Section	
R3-7-201.	Licensing Process
R3-7-202.	Repealed
R3-7-203.	Approval, Installation, and Sale of Devices
R3-7-204.	Livestock and Vehicle Scale Installation
~~R3-7-205.~~	~~Taxi Cab License Display~~

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

Section	
R3-7-301.	Repealed
R3-7-302.	Handbook 130 and Handbook 133
R3-7-303.	Repealed
R3-7-304.	Repealed
R3-7-305.	Repealed
R3-7-306.	Repealed
R3-7-307.	Repealed
R3-7-308.	Repealed
R3-7-309.	Repealed
R3-7-310.	Repealed
R3-7-311.	Repealed
R3-7-312.	Repealed
R3-7-313.	Repealed

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

Section	
R3-7-401.	Repealed
R3-7-402.	Price-posting Inspection Procedure and Violation Exceptions
R3-7-403.	Repealed
R3-7-404.	Repealed
R3-7-405.	Repealed
R3-7-406.	Repealed
R3-7-407.	Repealed
R3-7-408.	Repealed
R3-7-409.	Repealed
R3-7-410.	Repealed
R3-7-411.	Repealed
R3-7-412.	Repealed

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ARTICLE 5. PUBLIC WEIGHMASTERS

Section
R3-7-501. Qualifications; License and Renewal Application Process
R3-7-502. Duties
R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action
R3-7-504. Scales and Vehicle Weighing
R3-7-505. Weight Certificates
R3-7-506. Seal of Authority
R3-7-507. Prohibited Acts

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

Section
R3-7-601. Qualifications; License and Renewal Application Process
R3-7-602. Duties
R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment
R3-7-604. Prohibited Acts
R3-7-605. ~~Material Incorporated by Reference~~ Repealed

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

Section
R3-7-701. Definitions
R3-7-702. Material Incorporated by Reference
R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers
R3-7-704. Price and Grade Posting on External Signs
R3-7-705. ~~Price, Octane, and Lead Substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling
R3-7-706. ~~Unattended Retail Dispensers~~ Repealed
R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB
R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends
R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed
R3-7-710. Blending Requirements
R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-alcohol Blend Storage Tank Requirements
R3-7-712. Water in Service Station Motor Fuel Storage Tanks
R3-7-713. Motor Fuel Storage Tank Labeling
R3-7-714. Requirements for Motor Fuels Other than Arizona CBG
R3-7-715. Motor Fuel Quality Testing Methods and Requirements
R3-7-716. Sampling and Access to Records
R3-7-717. ~~Hold-open Latch Exception~~ Motor Fuel Dispensing Equipment
R3-7-718. Requirements for the Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends
R3-7-719. Repealed
R3-7-720. Renumbered
R3-7-721. Renumbered
R3-7-722. Reserved
through
R3-7-748. Reserved
R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB
R3-7-750. Registration Relating to Arizona CBG or AZRBOB
R3-7-751. Arizona CBG Requirements
R3-7-751.01. Repealed
R3-7-752. General Requirements for Registered Suppliers
R3-7-753. General Requirements for Pipelines and Third-party Terminals
R3-7-754. Downstream Blending Exceptions for Transmix
R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending
R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks
R3-7-757. Product Transfer Documentation; Records Retention
R3-7-758. Repealed
R3-7-759. Testing Methodologies
Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB
R3-7-760. Compliance Surveys
R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB
R3-7-762. Penalties
Table 1. Type 1 Arizona CBG Standards
Table 2. Type 2 Arizona CBG Standards

Table 3. Repealed

ARTICLE 8. REPEALED

ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

Section
R3-7-901. Material Incorporated by Reference
R3-7-902. Exemptions
R3-7-903. Equipment and Installation
R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-905. Initial Inspection and Testing
R3-7-906. Fee
R3-7-907. Operation
R3-7-908. Training and Public Education
R3-7-909. Recordkeeping and Reporting
R3-7-910. Annual Inspection and Testing
R3-7-911. Compliance Inspections
R3-7-912. Enforcement

ARTICLE 10. STAGE I VAPOR RECOVERY SYSTEMS

Section
R3-7-1001. Material Incorporated by Reference
R3-7-1002. Exemptions
R3-7-1003. Equipment and Installation
R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval
R3-7-1005. Initial Inspection and Testing
R3-7-1006. Fee
R3-7-1007. Operation
R3-7-1008. Training and Public Education
R3-7-1009. Recordkeeping and Reporting
R3-7-1010. Annual Inspection and Testing
R3-7-1011. Compliance Inspection
R3-7-1012. Enforcement
R3-7-1013. Stage II Vapor Recovery
Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

The definitions in A.R.S. §§ ~~41-2051~~ 3-3401, ~~41-2065~~ 3-3414, ~~41-2085~~ 3-3436, ~~41-2121~~, and ~~41-2131~~ 3-3511 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the Department issues for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the Department that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Department that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   d. Stop performing weighmaster, deputy weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Department that the person is complying with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   e. ~~Maintain~~ Comply with labeling, policies, and cash register indicator displays according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter;
   g. Excavate a vapor recovery site according to ~~R20-2-104(L)~~ R3-7-104(L);
   h. Comply with scheduling a test according to ~~R20-2-104(L)~~ R3-7-104(L); or
   ~~i. Retake a competency examination under A.R.S. § 41-2094.~~
3. "Application" means, for purposes of ~~R20-2-108~~ R3-7-108, forms ~~designated as applications~~ and all documents and additional information the Department requires an applicant to submit ~~with an application~~ when applying for a license.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.

6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
    a. At a location where there was not one previously;
    b. To replace all gasoline storage tanks; or
    c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2010~~ 2016 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
15. ~~"Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.~~
16. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (~~2009~~ 2016 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
17. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January ~~2005~~ 2016 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions and amendments.
18. ~~"NCWM" means the National Conference on Weights and Measures.~~
19. ~~18.~~ "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.
20. ~~19.~~ "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.
21. ~~20.~~ "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.
22. ~~21.~~ "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.
23. "NCWM" means the National Conference on Weights and Measures.
24. "NIST" means the National Institute of Standards and Technology.
25. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
26. "Out-of-service tag" means a red rejection tag that signifies ~~that~~ a commercial device does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook ~~44~~, or this Chapter.
27. "Person" as defined in A.R.S. § ~~41-2951~~ 3401, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline distributor, packer, manufacturer, licensee, transporter, or consignee.
28. "Placed in service" means the certification by a registered service agency or representative that a commercial device meets the requirements of A.R.S. Title 3, Chapter 19, Handbook 44, and this Chapter, and may be used, unless the Department orders otherwise.
29. "Placed-in-service report" means the form that a registered service representative completes and submits to the Department after placing a commercial device in service.
30. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.
31. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
32. "Seal of authority" means a stamp or press of the Department's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
33. "Service Counter" means a display counter staffed by a sales associate and has a point of sale device located within for conducting customer sales transactions.
34. ~~32.~~ 33. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Department.

~~33.~~ 34. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.

~~34.~~ 35. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.

~~35.~~ 36. "Underground storage tank" means a tank as described in A.R.S. § 49-1001~~(18)~~.

~~36.~~ 37. "Unit" means a quantity adopted as a standard of measurement.

~~37.~~ 38. "Vapor recovery registered service representative ~~No. 1~~" means an individual to whom the Department has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 or this Chapter including annual vapor-recovery tests.

~~38. "Vapor recovery registered service representative No. 2" means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.~~

39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, CARB Executive Orders, or this Chapter.

40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Department, ~~that~~ which certifies the accuracy of the weight of the commodity measured.

R3-7-102. Metrology Laboratory Testing and Calibration Fees

A. For all services of the Department's Metrology Laboratory, the Department shall charge $110 per hour with a minimum charge of $50.

B. In addition to the fee in subsection (A), the Department shall charge for travel and per diem at the rates established under A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

R3-7-103. Licensing and Fees

A. A license is effective on the first day of the month following the date that the license application is filed with the Department. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if the Department does not receive the payment by the due date. The Department shall not process a license or renewal application for which payment is delinquent.

C. The Department shall prorate a license renewal fee if the licensee's first renewal is fewer than 12 months from the date that license is issued.

D. The Department shall issue a full refund to a licensee for a license renewal fee only if the licensee provides written notice to the Department before the renewal fee due date that the renewal is not needed.

R3-7-104. Administrative Enforcement Action

A. The Department shall take progressive enforcement action for a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The Department shall provide a copy of its inspection report to the person who owns or operates a location that the Department inspects. The report shall include the inspection results, violations, and enforcement action. The Department shall send a copy of the inspection report to the owner of a location by electronic mail if the owner has provided an electronic mail address to the Department.

C. The person who owns or operates a location inspected by the Department may request a hearing under ~~R20-2-109~~ R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The Department shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § ~~41-2115(B)~~ 3-3475(B).

F. Commercial device.

1. The Department ~~shall~~ may place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.

2. The Department shall confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Department authority.

3. The Department shall condemn and confiscate a weight, measure, or other commercial device that the Department determines is incorrect and not capable of compliance with Handbook 44.

~~3.~~ 4. The Department shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.

a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.

b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.

~~4.~~ 5. The Department shall issue a warning tag when a commercial device is not in compliance with the requirements in Handbook 44 A.R.S. Title 3, Chapter 19, Handbook 44, or this Chapter and the lack of compliance creates a situation favorable to the ~~public~~ consumer. The Department shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, and this Chapter.

~~5.~~ 6. The Department shall issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.

~~6.~~ 7. The Department shall issue an out-of-service tag if a Department inspector cannot conduct an inspection of a commercial device because of a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.

~~7.~~ 8. The Department shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero as prescribed in Handbook 44.

~~8.~~ 9. The Department shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Department shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.

~~9.~~ 10. The Department shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Department shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.

~~10.~~ 11. In addition to any enforcement action under subsections (F)(1) through ~~(9)~~ (10):

a. If the Department finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:

i. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the person who owns or operates the commercial device; and

ii. The Department ~~shall~~ may impose a civil penalty up to $500 civil penalty on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.

b. If the Department finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:

i. The Department ~~shall~~ may issue an administrative order to the person at the conclusion of the inspection and impose a civil penalty up to $300 ~~civil penalty~~; and

ii. The Department ~~shall~~ may issue an administrative order to the person and impose a civil penalty up to $500 ~~civil penalty~~ at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy weighmaster.

1. The Department ~~shall~~ may issue an administrative order if a public weighmaster's:
   a. Weigh tickets are not in numbered sequence or are missing,
   b. If used, the seal ~~Seal~~ or press is not readable, or
   c. Records are not maintained according to ~~R20-2-505~~ R3-7-505.
2. The Department ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster if:
   a. The public weighmaster's weigh tickets contain inaccurate information,
   b. The public weighmaster violates an administrative order, or
   c. The public weighmaster misuses a seal or press or has an unauthorized seal or press.
3. The Department shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
4. The Department shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
5. The Department shall issue an administrative order and a civil penalty up to $300 to a person who performs public weighmaster duties without a license.
6. If a public ~~Weighmaster~~ weighmaster permits an unlicensed person to perform deputy ~~Weighmaster~~ weighmaster duties, the Department ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties;
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties; and
   c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy weighmaster duties more than twice.

H. ~~Package~~ Packaging.

1. The Department shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
   a. Returning the package to the packer or manufacturer,
   b. Labeling the package to reflect its correct quantity,
   c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
   d. Repackaging the commodity so the package contains the quantity represented.
2. In addition to an administrative order, the Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.

1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.

2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price verification ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the Department completing the ~~reinspection~~ inspection.
   a. The Department ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ per violation on a person who fails a reinspection if the Department finds more than one item at more than its posted price.
   b. The Department ~~shall~~ may impose a civil penalty up to $200 ~~civil penalty~~ per violation on a person who fails a second reinspection. The Department shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.
3. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.
4. The Department ~~shall~~ may issue a warning tag to a person who does not have a written price-error policy. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the person does not have a written price-error policy upon reinspection.
5. The Department shall issue a warning tag to a person who does not have a price display visible to the ~~public~~ consumer at a check-out location. The Department shall issue an out-of-service tag if the person does not have a price display visible to the ~~public~~ consumer at a check-out location upon reinspection.

J. Price posting.
1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price posting ~~reinspection~~ inspection if the violation cannot be corrected within 30 minutes of the Department completing the ~~reinspection~~ inspection.
3. The Department ~~shall~~ may impose a civil penalty up to $50 ~~civil penalty~~ for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.
4. The Department ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ for each inspected lot not priced if a person fails a second reinspection.
5. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.

K. Fuel quality and labeling.
1. The Department shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The Department shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.
2. The Department ~~shall~~ may issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ if the person does not correct the labeling or signage violation within the time specified in the administrative order.
3. The Department ~~shall~~ may issue an administrative order and impose a civil penalty up to $500 per octane level ~~civil penalty~~ or fuel grade to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:
   a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,
   b. Selling the motor fuel at the correct octane level,
   c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,
   d. Removing all water from the storage tank or emptying the tank per R3-7-711 or R3-7-712, or
   e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.
4. The Department ~~shall~~ may issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Department's request. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a person who provides the requested documentation between 24 and 72 hours. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.
1. The Department ~~shall~~ may issue an administrative order to stop construction at a vapor recovery site and impose a civil penalty up to $500 ~~civil penalty~~ on a person who:
   a. Begins construction or makes a major modification without an authority to construct plan approval,
   b. Does not comply with the authority to construct plan approval, or
   c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:
      i. The vapor recovery system and its components comply with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter; and
      ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.
2. The Department ~~shall~~ may issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Department pre-burial inspection and ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ if the excavated system does not pass required vapor recovery tests according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.

3. The Department shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Department shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
4. The Department ~~shall~~ may impose a civil penalty up to $100 ~~civil penalty~~ on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.
5. The Department ~~shall~~ may issue a warning tag to a person whose vapor recovery system labeling does not comply with ~~the authority to construct plan approval~~ R3-7-713. The Department ~~shall~~ may issue a stop-sale, stop-use tag and impose a civil penalty up to $500 ~~civil penalty~~ on a person who does not correct a labeling violation within the time specified on a warning tag.
6. The Department shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under ~~R20-2-905~~ R3-7-905 or ~~R20-2-910~~ R3-7-910. If the test failure is isolated to a system component, the Department's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.

~~7.~~ M.The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

~~M.~~ N.Registered service agency and registered service representative.

1. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service or test report, the Department shall:
   a. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service report, the Department ~~shall~~ may:
   b. Impose a civil penalty up to $50 ~~civil penalty~~ on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the Department ~~shall~~ may:
   a. Issue an administrative order,
   b. Impose a civil penalty up to $500 ~~civil penalty~~ and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The Department ~~shall~~ may issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for which the unlicensed individual works.
5. The Department ~~shall~~ may issue an administrative order if a registered service representative places a commercial device into service without Department authorization. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency whose representative places a commercial device into service without Department authorization.
6. The Department ~~shall~~ may impose a civil penalty up to $500 ~~civil penalty~~ on a registered service agency whose registered service representative uses a metrology standard or vapor recovery ~~air to liquid (A/L) ratio~~ testing equipment that is not certified according to this Chapter and, as applicable, CARB test methods. The Department shall confiscate a metrology standard or ~~A/L ratio~~ vapor recovery testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Department shall return the standard or equipment when it is properly certified.
7. The Department shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter:
   a. Notify the Department of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.
8. The Division may impose a civil penalty up to $300 on a vapor RSA that violates (M)(7)(a), (b), (d), or (e). The Department ~~shall~~ may impose a civil penalty up to $300 ~~civil penalty~~ on a vapor recovery registered service agency that violates subsection (M)(7)(c) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Department ~~shall~~ may:
   a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service agency for the first violation, and
   b. Impose a civil penalty up to $500 ~~civil penalty~~ on the registered service agency for each subsequent violation by the registered service representative.
10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the registered service representative shall:
    a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by ~~R20-2-910~~ R3-7-910;

b. Notify the Department of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and

c. Notify the Department of the time of the test required by ~~R20-2-910~~ R3-7-910 or R3-7-1010 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.

11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the Department ~~shall~~ may:

a. Impose a civil penalty up to $300 ~~civil penalty~~ on the registered service representative;

b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and

c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).

R3-7-105. Repealed

R3-7-106. Repealed

R3-7-107. Repealed

R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct

A. For each type of license, renewal, or authority issued by the Department, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.

B. For each type of license, renewal, or authority issued by the Department, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the Department receives an application.

1. If the application is not administratively complete, the Department shall send a deficiency notice to the applicant.

a. The deficiency notice shall state each deficiency and the information needed to complete the application.

b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Department the missing information specified in the deficiency notice. The time-frame for the Department to finish the administrative completeness review is suspended from the date the Department mails the deficiency notice to the applicant until the date the Department receives the missing information.

c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Department shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.

2. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.

C. For each type of license, renewal, or authority issued by the Department, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Department sends written notice of administrative completeness to the applicant.

1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Department to finish the substantive review is suspended from the date the Department mails the request until the Department receives the information.

2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the Department shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the Department deny the application within 15 days of the date of the notice of withdrawal. An applicant who desires to reapply shall begin the application process anew.

3. The Department shall issue a written notice of denial of license, renewal, or authority if the Department determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority. The notice of denial shall include:

a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and

b. The name and telephone number of a Department employee who can answer questions regarding the application process.

4. If the applicant meets all of the substantive criteria required by A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter for a license, renewal, or authority the Department shall issue the license, renewal, or authority to the applicant.

D. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

E. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

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

R3-7-109. Administrative Hearing Procedures

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the Department's hearings.

R3-7-110. Motion for Rehearing or Review

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Department who is aggrieved by a decision rendered in the case may file with the Department, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Department. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Department may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:

1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the Department.
2. Misconduct of the Department, the administrative law judge, or the prevailing party.
3. Accident or surprise that could not have been prevented by ordinary prudence.
4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.
7. That the decision is not justified by the evidence or is contrary to law.

D. The Department may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Department may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.

E. The Department, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.

F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The Department may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the Department permits reply affidavits, the replying party has five days in which to serve them.

G. If the Department makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Department may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Department's final decision.

R3-7-111. Repealed

R3-7-112. Repealed

R3-7-113. Renumbered

R3-7-114. Repealed

R3-7-115. Renumbered

R3-7-116. Renumbered

R3-7-117. Renumbered

Table 1. Time-frames (in days)

Type of License	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information	Overall Time-frame
Commercial Device ~~R20-2-201~~ R3-7-201	10	20	30	20	40
Public Weighmaster ~~R20-2-501~~ R3-7-501	10	20	30	20	40

Registered Service Agency/Representative ~~R20-2-601~~ R3-7-601	10	20	30	20	40
Authority to Construct ~~R20-2-904~~ R3-7-904	10	20	30	20	40

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201. Licensing Process

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the Department. The application shall be on a form supplied by the Department that includes:

1. The applicant's name, address, and telephone number;
2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device; ~~and~~
4. The applicant's signature~~.~~ ; and
5. An electronic mail address of the owner or operator of the location where the commercial device will be operated for the Division to provide notice of inspections and reports.

R3-7-202. Repealed

R3-7-203. Approval, Installation, and Sale of Devices

A. A commercial device installed or placed in use after January 1, 1975, shall be prototype-approved by NCWM or have a certificate of approval from the California Type Evaluation Program.
   1. If a commercial device has been continuously licensed since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.
   2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Department inspection, the Department shall issue an out of service tag or confiscate the device per R3-7-104(F)(3) and revoke the commercial device license. ~~and a~~ A person shall ~~not~~ no longer use the device commercially.

B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

R3-7-204. Livestock and Vehicle Scale Installation

A. Portable livestock and portable vehicle scales shall be designed to be moveable from one location to another.
B. Portable scales and low-profile electronic scales shall be accessible for maintenance.
C. Notwithstanding Handbook 44, vehicle and livestock scales installed above ground shall have 2 feet minimum clearance from the bottom of the lowest platform support girder to the ground.
D. Notwithstanding Handbook 44, vehicle and livestock scales, installed with a pit, shall have 2 feet minimum clearance from the bottom of the main girder that is lowest in platform support to the pit floor.

~~**R3-7-205. Taxi Cab License Display**~~

~~A taxicab device licensee shall post the device license on the outside of the rear window of the taxicab.~~

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

R3-7-301. Repealed

R3-7-302. Handbook 130 and Handbook 133

A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.
B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:
   1. Clearly labels the price-per-pound where the packaged produce is displayed, and
   2. Deducts a tare for the packaging from the gross weight at the time of sale.
C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.
D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retail-

er shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

E. A person who owns or operates a plant nursery shall label each commodity with its identity, ~~container size,~~ and price, or post a sign with this information adjacent to the point of display.

F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

R3-7-303. Repealed

R3-7-304. Repealed

R3-7-305. Repealed

R3-7-306. Repealed

R3-7-307. Repealed

R3-7-308. Repealed

R3-7-309. Repealed

R3-7-310. Repealed

R3-7-311. Repealed

R3-7-312. Repealed

R3-7-313. Repealed

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

R3-7-401. Repealed

R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

A. The Department shall choose one item that was used and up to four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the Department finds an alleged price-posting violation involving an item used during its price-verification inspection, the Department shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:
   1. No price is posted or displayed for an inspected item unless it is not required under subsection (D)(12), or
   2. Less than 98 percent of the prices of inspected items are posted accurately.
   3. An incorrect price is posted for an item on, in, or behind a service counter.
   4. A percentage off is provided, but there is no price displayed for the item on, in, or behind a service counter.

D. The following are not price-posting violations:
   1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
   2. A price is posted on the shelf or on a hook in front of or behind a row of items at the farthest left side of all items with the same price for up to 3 feet of shelf space or at the farthest left and farthest right side of the shelf or hooks with the same priced items. The price for commodities with the same uniform price code may be more than three feet from the price posted if they are all displayed in the same location;
   3. A price posted above the highest item in a vertical location is the price of all items of the same price in that location;
   4. A storage area that is posted as a storage area for which a customer should ask for assistance;
   5. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
   6. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
   7. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display. A service counter is not an advertising display;
   8. A menu-type sign at a point of display that lists the name and price of every item at the point of display in ~~text at least 3/8" high~~ legible text;
   9. A point of display contains more than one item posted with the manufacturer's name or logo and the price and name of each item in the point of display is posted;
   10. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department; ~~and~~

11. A notice states that there is an additional charge based on an item's size and each size and the additional charge for each size is posted~~.~~; and
12. An item that does not have a price and is located on, in, or behind a service counter.

R3-7-403. Repealed

R3-7-404. Repealed

R3-7-405. Repealed

R3-7-406. Repealed

R3-7-407. Repealed

R3-7-408. Repealed

R3-7-409. Repealed

R3-7-410. Repealed

R3-7-411. Repealed

R3-7-412. Repealed

ARTICLE 5. PUBLIC WEIGHMASTERS

R3-7-501. Qualifications; License and Renewal Application Process

A. In addition to the requirements of A.R.S. § ~~41-2093~~ 3-3453, to be a public weighmaster or a deputy public weighmaster, a person shall:
1. Be at least 18 years old,
2. Be able to operate a scale accurately, and
3. Be able to execute weight certificates properly.

B. A person shall not perform the duties of a public weighmaster ~~or deputy public weighmaster~~ until the person passes the written weighmaster examination administered by the Department. A person may not take the examination more than two times in six months.

C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the Department. A separate application shall be submitted for each location the public weighmaster or deputy weighmaster will issue weight tickets.
1. The application form includes:
   a. The applicant's name, address, and telephone number;
   b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
   c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
   d. The applicant's signature.
2. The public weighmaster's application form also includes:
   a. The name of each deputy public weighmaster operating at each location;
   b. A statement that the public weighmaster understands they are responsible to ensure that any deputy weighmasters working at the location are adequately trained and licensed;
   ~~b.~~ c. The name and address of the scale; and
   ~~c.~~ d. The scale description.
3. The deputy weighmaster application shall include a certification that they understand the requirements on a form provided by the Department and be signed by both the public weighmaster and the applicant.

~~3.~~ 4. An applicant may be required to submit evidence of qualifications and shall be examined regarding competence or qualifications.
5. The public weighmaster shall ensure all deputy weighmasters are licensed for the location prior to their issuance of weight tickets.

D. Before the Department issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, and this Chapter.

E. The Department does not charge a fee to process a change in name or address.

R3-7-502. Duties

A public weighmaster shall:
1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;
2. Use scales according to applicable laws and rules; ~~and~~
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster.

4. Add or remove deputy weighmasters from a particular location to ensure each location has the correct licensed deputy weighmasters.

R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action

A. The Department may deny a weighmaster license for any of the following reasons:
   1. Providing false or misleading information;
   2. Failing to meet the requirements stated in this Article; or
   3. Any of the reasons stated in subsections (B)(1) through (9).

B. The Department may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Department has determined that the public weighmaster:
   1. Does not have the ability to weigh accurately;
   2. Has not correctly made weight certificates;
   3. Has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter;
   4. Has falsified a weight certificate;
   5. Has delegated authority to someone other than a licensed ~~public weighmaster or~~ deputy public weighmaster;
   6. Has improperly used a weighmaster's seal of authority;
   7. Has presigned certificates for later use;
   8. Has issued a weight certificate on which changes or alterations were made; or
   9. Has used a scale for public weighing that is not properly licensed.

R3-7-504. Scales and Vehicle Weighing

A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.
B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.
C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.
D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
E. The Department shall separately license and regulate each scale location.
F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

R3-7-505. Weight Certificates

A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy weighmaster has accurately and personally determined.
B. A public weighmaster or deputy public weighmaster shall not make any entries on a weight certificate issued by another person.
C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.
D. A weight certificate is valid only when properly signed, along with the license number, ~~and sealed~~ by the issuing weighmaster or the weighmaster's deputy. The name and license number of the public weighmaster or deputy public weighmaster may be imprinted electronically on the weighmaster certificate in lieu of a handwritten signature and license number if the electronically imprinted name and license number is that of the weighmaster who weighed, measured, or counted the commodity.
E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.
F. A weight certificate shall state:
   1. The date of issuance;
   2. The name of the declared owner, agent, or consignee of the material weighed;
   3. The accurate weight of the material weighed or counted;
   4. The means by which the material is being transported at the time it is weighed or counted;
   5. An identification number of the transporting unit, including a license number; and
   6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed ~~and sealed~~, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."
   7. The printed name of the principal weighmaster and principal weighmaster's license number.
G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically. A weighmaster shall not use another filing system without Department approval.

R3-7-506. Seal of Authority

The use of a seal for the certification of weight certificates is optional if agreed to by both the weighmaster and the consumer. If a seal is used by the public weighmaster, the following shall apply:

~~A.~~ 1. A weighmaster shall obtain a seal for the certification of weight certificates at cost through the Department.
~~B.~~ 2. The Department shall assign a number to a seal identifying the public weighmaster and the specific location for which the seal is issued.
~~C.~~ 3. A seal is the property of the state. A weighmaster shall surrender a seal to the Department within 30 days after the weighmaster no longer operates as a licensed public weighmaster.
~~D.~~ 4. A public weighmaster shall have one seal for use at each scale location.
~~E.~~ 5. A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.
~~F.~~ 6. A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the Department during all business hours.

R3-7-507. Prohibited Acts

A. A person shall not:
1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a person authorized to act for a public weighmaster;
3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a person authorized to act for a public weighmaster;
4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;
5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weighmaster;
6. Use without authorization the title "licensed public weighmaster" or any similar title;
7. Represent oneself to be a public weighmaster without holding a license issued by the Department;
8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
9. Use an unlicensed scale in the performance of public weighmaster duties; or
10. Operate a scale for public weighing unless that person is licensed as a public weighmaster.

B. People engaged in the business of printing weight certificate forms, their representatives, and the Department are exempt from the prohibitions specified in subsections (A)(2) and (3).

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R3-7-601. Qualifications; License and Renewal Application Process

A. Registered service agency.
1. To obtain a license as a registered service agency, an applicant shall provide evidence that:
   a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
   b. The applicant provided its representative with a copy of the portions of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter relating to registered service representative duties;
   c. The applicant:
      i. Possesses the necessary certified standards and testing equipment to service commercial devices; and
      ii. Possesses the necessary test equipment calibrated annually by the equipment manufacturer to perform an air to liquid (A/L) test of a vapor recovery system or vapor recovery component properly; or
      iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
   d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter.
2. The Department shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
3. An applicant for a registered service agency license shall submit an application form, obtained from the Department that provides:
   a. Name, address, telephone number, electronic mail address, and facsimile number;
   b. License information from other states;
   c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
   d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
   e. Branch office information;
   f. Names of registered service representatives and their experience with other registered service agencies or states;
   g. License and disciplinary history; and
   h. Applicant's signature.

B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Department with evidence that the third-party registered service agency:
1. Holds a valid license issued by the Arizona Registrar of Contractors,

2. Complies with workers' compensation insurance laws, and
3. Maintains liability insurance sufficient to cover the value of work to be performed.

C. Registered service representative.
1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
   a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders, and this Chapter;
   b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
   c. The applicant will operate according to appropriate laws within A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Handbook 44, ~~Handbook 112,~~ CARB Executive Orders; and this Chapter; and
   d. The applicant has passed the competency examination specified in subsection (D).
2. An applicant for a registered service representative license shall submit an application on a form obtained from the Department that provides:
   a. Name, address, telephone number, and facsimile number;
   b. License information from other states;
   c. An indication of whether the applicant is applying to be a registered service representative~~,~~ or a vapor recovery service representative ~~No. 1, or vapor recovery service representative No. 2~~;
   d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
   e. Work experience with other registered service agencies in Arizona or other states;
   f. License and disciplinary history; and
   g. Applicant's signature.
3. An applicant for a vapor recovery registered service representative ~~No. 1~~ license shall maintain and make available to the Department upon request evidence of being:
   a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
   b. Determined qualified by the Department to test or repair all vapor recovery systems and components.

D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a Department-administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.
2. An applicant shall bring a copy of Handbook 44 and ~~Handbook 112~~ to the examination site.
3. An applicant shall complete the competency examination within the time specified by the Department.
4. The Department shall not allow an applicant to take the competency examination more than two times in six months.

E. As required under A.R.S. § ~~41-2094(G)~~ 3-3454(G), the Department shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Department for the registered service representative.

F. Renewal of a registered service representative license. Under A.R.S. § ~~41-2094(D)~~ 3-3454(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with ~~R20-2-603(E)~~ R3-7-603(E). Before complying with ~~R20-2-603(E)~~ R3-7-603(E), the registered service agency shall ensure that annually:
1. A vapor recovery registered service representative ~~No. 1 or 2~~ completes the Department's training class, and
2. A vapor recovery registered service representative takes and passes the Department's written vapor recovery competency examination, ~~as follows:~~
   ~~a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and~~
   ~~b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.~~

G. The Department does not charge a fee to process a change in business name or address.

R3-7-602. Duties

A. Registered service agency.
1. A registered service agency shall:
   a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
   b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter, CARB test procedures, and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Department.
   ~~a. The registered service agency shall complete the placed-in-service report in triplicate;~~
   ~~b.~~ a. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall complete an online placed-in-service report ~~mail the original of the properly-completed and signed placed-in-service report~~ to the Department. If an online placed-in-service report is not available for the device, a paper report shall be submitted;
   ~~c.~~ b. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;

~~d.~~ c. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;

~~e.~~ d. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who installs or repairs the commercial device and completes the report;

~~f.~~ e. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;

~~g.~~ f. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and

~~h. g. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.~~

3. A registered service agency shall have all equipment used for commercial device certification and ~~A/L testing~~ certified annually by the manufacturer. Vapor recovery test equipment shall be certified as required by the CARB test procedure or this Chapter.
4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.
5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
6. A registered service agency shall use a form approved by the Department to record vapor recovery test results and violations. The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test shall be ~~mailed~~ emailed within seven days after completion of the test.
7. ~~A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.~~
8. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, ~~approved by the Department,~~ at least ~~10~~ 5 business days before an initial or annual test.

B. Registered service representative.

1. A registered service representative shall:
   a. Install only commercial devices that meet the requirements of this Chapter;
   b. Perform all vapor recovery tests according to this Chapter;
   c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, this Chapter, Handbook 44, ~~Handbook 112,~~ and CARB Executive Orders are met;
   d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
   e. Complete placed-in-service reports accurately.
2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by ~~R20-2-910~~ R3-7-910. The registered service representative shall notify the Department of the stop-sale, stop-use by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Department ~~can~~ may witness the test.

R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

A. The Department shall not issue a license or renewal until an applicant pays all appropriate fees.

B. Upon receipt and acceptance of all required documents, fees, and Department certification of standards, the Department shall issue the agency a license or renewal.

C. The Department shall include on a license an assigned number, that remains effective until either withdrawn by the Department or until it expires. The Department shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.

D. Neither a registered service agency nor a registered service representative shall transfer a license.

E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.

F. The Department may deny a license or renewal for any of the following reasons:

1. Providing false or misleading information;
2. Failure to meet annual certification requirements for standards or testing equipment;
3. Failure to meet the requirements stated in this Article; or
4. For any reason that would be grounds for suspension, revocation, or refusal to renew.

G. The Department may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter.

H. Every registered service agency and representative shall comply with the Department's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § ~~41-2067(F)~~ 3-3416(F).

Department of Weights and Measures

R3-7-604. Prohibited Acts

A. A person shall not:
   1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the Department;
   2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
   3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the Department.

B. A registered service agency or registered service representative shall not:
   1. Fraudulently complete or file a placed-in-service report;
   2. Delegate licensed authority or responsibility to an unlicensed person;
   3. Perform a function without certified equipment;
   4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;
   5. Fail to report a commercial device to the Department within two business days of finding that device is out of compliance;
   6. Install, calibrate, or repair a commercial device without placing a ~~sequentially numbered~~ decal or label on the device as prescribed by the Director;
   7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
   8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

~~**R3-7-605. Material Incorporated by Reference**~~

~~The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments:~~

1. ~~California Air Resources Board Executive Order G-70-17-AD, *Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System*, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
2. ~~California Air Resources Board Executive Order G-70-36-AD, *Modification of Certification of the OPW Balance Phase II Vapor Recovery System*, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
3. ~~California Air Resources Board Executive Order G-70-52-AM, *Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems*, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
4. ~~California Air Resources Board Executive Order G-70-70-AC, *Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities*, June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
5. ~~California Air Resources Board Executive Order G-70-150-AE, *Modification to the Certification of the Marconi Commerce Systems Inc. (MCS) "Formerly Gilbarco" VaporVac Phase II Vapor Recovery System*, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
6. ~~California Air Resources Board Executive Order G-70-153-AD, *Modification to the Certification of the Dresser/Wayne-Wayne-Vac Phase II Vapor Recovery System*, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
7. ~~California Air Resources Board Executive Order G-70-154-AA, *Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System*, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
8. ~~California Air Resources Board Executive Order G-70-163-AA, *Modification to the Certification of the OPW VaporEZ Phase II Vapor Recovery System*, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
9. ~~California Air Resources Board Executive Order G-70-164-AA, *Modification to Certification of the Hasstech VCP 3A Vacuum Assist Phase II Vapor Recovery System*, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
10. ~~California Air Resources Board Executive Order G-70-165, *Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle*, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
11. ~~California Air Resources Board Executive Order G-70-169-AA, *Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System*, August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
12. ~~California Air Resources Board Executive Order G-70-177-AA, *Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System*, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~
13. ~~California Air Resources Board Executive Order G-70-180, *Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities*, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

~~14. California Air Resources Board Executive Order G-70-183-AA, *Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.)*, June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

~~15. California Air Resources Board Executive Order G-70-186, *Certification of the Healy Model 400 ORVR Vapor Recovery System*, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

~~16. California Air Resources Board Executive Order G-70-188, *Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System*, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

~~17. California Air Resources Board Executive Order G-70-191-AA, *Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.)*, July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

~~18. California Air Resources Board Executive Order G-70-196, *Certification of the Saber Technologies, LLC SaberVac VR Phase II Vapor Recovery System*, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.~~

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-701. Definitions

In addition to the definitions in ~~R20-2-101~~ R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Area A" has the same meaning as in A.R.S. ~~§ 49-541~~ §3-3401.

"Area B" has the same meaning as in A.R.S. ~~§ 49-541~~ §3-3401.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § ~~41-2124(J)~~ 3-3493(I).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.

"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

~~*"Biodiesel" means a diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01.* A.R.S. § 41-2051~~ "Biodiesel" has the same meaning as prescribed under A.R.S. §3-3401.

~~*"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend.* 41-2051~~ "Biodiesel blend" has the same meaning as prescribed under A.R.S. § 3-3401.

~~"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,~~

~~Is a mono-alkyl ester,~~

~~Meets the standards in ASTM D6751,~~

~~Is intended for use in some engines designed to run on conventional diesel fuel, and~~

~~Is derived from nonpetroleum renewable resources.~~

~~"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.~~

~~"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a blend component in motor fuel~~ "Biofuel" has the same meaning as prescribed under A.R.S. §3-3401.

~~"Biofuel blend" means a motor fuel composed of biofuel and petroleum-based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.~~ "Biofuel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Biofuel blender" means a person that modifies a gasoline, gasoline blend, diesel, or diesel blend by adding a biofuel.

"Biofuel producer" means a person that owns, leases, operates, controls, or supervises a facility at which biofuel is produced.

~~"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.~~ "Biomass" has the same meaning as prescribed under A.R.S. § 3-3401.

"Biomass-based diesel" has the same meaning as prescribed under A.R.S. §3-3401.

"Biomass-based diesel blend" has the same meaning as prescribed under A.R.S. §3-3401.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

~~"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.~~

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in ~~R20-2-702(11)~~ R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in ~~R20-2-702(8)~~ R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

~~*"Diesel"* or "diesel fuel" *means a refined middle distillate that is used as a fuel in a compression ignition internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051~~ "Diesel fuel" or "Diesel" has the same meaning as prescribed under A.R.S. § 3-3401.

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

~~"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D5798, which is incorporated by reference in R20-2-702.~~

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in ~~R20-2-702~~ R3-7-702.

"Ethanol flex fuel" has the same meaning as prescribed under A.R.S. §3-3401.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the ~~specifications~~ requirements in ASTM D4806, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.

~~"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark ignition internal combustion engines. Gasoline does not include diesel fuel or E85 ethanol flex fuel.~~ "Gasoline" has the same meaning as prescribed under A.R.S. §3-3401.

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

~~"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, which are not currently available on the retail market, for an automotive manufacturer.~~ "Manufacturer's proving ground" has the same meaning as prescribed under A.R.S. §3-3401.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

~~*"Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and the ethanol blend E85 as defined in ASTM D5798. A.R.S. § 41-2051*~~ "Motor Fuel" has the same meaning as prescribed under A.R.S. § 3-3401.

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in ~~R20-2-751(A)(1)~~ R3-7-751(A)(1) through (7), ~~R20-2-751(B)(1)~~ R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

~~"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.~~ "Motor vehicle racing event" has the same meaning as prescribed under A.R.S. §3-3401.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent; not blended with motor fuel.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

~~*"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the United State environmental protection agency pursuant to 42 United States Code §7545(f).* A.R.S. § 41-2121~~ "Oxygenate" has the same meaning as prescribed under A.R.S. §3-3401.

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

~~"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:~~

~~Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79;~~

~~Is not a mono-alkyl ester;~~

~~Is intended for use in engines designed to run on diesel fuel;~~

~~Is derived from petroleum and nonpetroleum renewable resources;~~

~~Meets the requirements of ASTM D975; and~~

~~Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.~~

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

~~"Pressurant" means a blendstock component of an E85 blend for sale within the CBG covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.~~

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the Director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

~~"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.~~ "Product transfer document" has the same meaning as prescribed under A.R.S. §3-3401.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

"Biofuel Supplier" means a marketer or jobber of a biofuel or biofuel blend.

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

~~"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.~~ "Vehicle emissions control area" has the same meaning as prescribed under A.R.S. §3-3401.

"VOC" means volatile organic compound.

R3-7-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 14, 2016 ~~1, 1998~~ Edition, Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
2. ASTM Standard D975, ~~2010~~ ~~2015b~~ 2015c (ASTM D975~~-10~~ ~~15b~~15c), "Standard Specification for Diesel Fuel Oils," published ~~April 2010~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
3. ASTM Standard D4806, ~~2009~~ ~~2015~~ 2016a (ASTM D4806~~-09~~ ~~15~~16a), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published ~~July 2009~~ ~~2015~~2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
4. ASTM Standard D4814, ~~2009b~~ ~~2015a~~ 2016b (ASTM D4814~~-09b~~ ~~15a~~16b), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published ~~September 2009~~ October ~~2015~~2016, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
5. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
6. ASTM Standard D5798, ~~2009b~~ ~~2014~~-2015 (ASTM D5798~~-09b~~ ~~14~~15), "Standard Specification for ~~Fuel~~ Ethanol Fuel Blends ~~(Ed75-Ed85)~~ for Flexible-Fuel Automotive Spark-Ignition Engines," published ~~May 2009~~ ~~2014~~2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
7. ASTM Standard D6751, ~~2009a~~ ~~2015~~-2015c (ASTM D6751-~~09a~~ ~~15a~~15c), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published ~~February 2010~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
8. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
9. The Federal Complex Model ~~as~~ contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government ~~Printing~~ Publishing Office, ~~P.O. Box 979050, St. Louis, MO 63197-9000~~ 732 North Capitol Street, NW, Washington, D.C. 20401-0001 or bookstore.gpo.gov.
10. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

11. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
12. ASTM Standard D7467, ~~2009a~~ ~~2015~~ 2015c (ASTM D7467-~~09a~~ ~~15a~~15c), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published ~~June 2009~~ 2015, ASTM International ~~(formerly American Society for Testing and Materials)~~, 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
13. SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines," published May 5, 2012, SAE International, 400 Commonwealth Drive, Warrendale, PA 15096-0001 or www.sae.org.

B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers

A. After completing an inspection, the Department shall return all motor fuel to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the Department collected the motor fuel.

B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of ~~the service station~~ a motor fuel dispensing site at the site where the Department collected the motor fuel, the Department shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.

R3-7-704. Price and Grade Posting on External Signs

A. A person who owns or operates a ~~service station~~ motor fuel dispensing site that has an external sign shall ensure that the sign:
   1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
   2. Identifies the self-service and full-service prices, if different;
   3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;
   4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2", whichever is larger, and is visible from the road;
   5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
   6. Describes ~~diesel~~ ~~inc~~ fuel that meets ASTM D975 as Diesel No. 1-~~diesel~~, Diesel #1-~~diesel~~, Diesel No. 2-~~diesel~~, Diesel #2-~~diesel~~, or premium diesel; Describes other fuel for use in compression ignition engines as biodiesel, or biodiesel blend; ~~and~~
   7. Describes gasoline ethanol blends meeting the requirements of ~~R20~~R3-~~2~~7-705(E) as ethanol flex fuel; and
   8. Identifies the unit of measure of the price, if it is other than per gallon.

B. ~~If~~ For the following terms ~~are~~ used ~~in~~ on a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

C. A person may use an alternative to the descriptions provided in subsection (B) upon written approval by the Associate Director.

R3-7-705. ~~Price, Octane, and Lead-substitute Notification on Dispensers~~ Retail Dispenser Price Notification and Labeling

A. ~~A service station~~ The owner or operator of a motor fuel dispensing site shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a ~~service station~~ motor fuel dispenser:
   1. Is clean, legible, and visible at all times;
   2. Is displayed electronically or with a sign or label on the upper ~~60~~ 50 percent of each face of the dispenser;
   3. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
   4. Displays the highest price of motor fuel sold from the dispenser prior to any deliberate action of the customer resulting in a discounted price being displayed, provided ~~if~~ the dispenser is capable of dispensing and computing the price ~~of multiple grades of~~ motor fuel at more than one price;
   5. ~~Displays a discount, if offered, in letters at least ¼" in height on each face of the dispenser and next to the undiscounted price;~~
   6. ~~Displays both a cash and credit price on a dispenser that is capable of electronically displaying both cash and credit prices;~~
   7. ~~Posts both a cash and credit price on each face of a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices;~~
   8. ~~Posts a price-per-gallon sign next to or on a non-price computing dispenser for a retail only sale of liquefied petroleum gas used as an alternative motor fuel~~ Complies with Handbook 44, Section 3.30, Liquid Measuring Devices, Section S.1.6.4; and
   ~~9.~~ 6. Complies with the requirements of ~~R20-2-704(A)(1)~~ R3-7-704(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), ~~and~~ (A)(7), (A)(8) and (B).

B. A person who owns or operates a ~~service station~~ motor fuel dispensing site shall ensure that:

Commented [CVX1]: Allows biodiesel or biomass based diesel at up to 5% volume to be sold as "Diesel", in alignment with ASTM D975 and FTC rules.

Commented [CVX2]: Two scenarios:
1) Some older dispensers may only be able to display one price per product (which is covered here). In that case the dispenser needs to simply display the highest price.
2) Newer dispensers will have the capability to display multiple prices for a motor fuel product. These will default to the highest price after the previous transaction concluded. The customer can qualify for a discounted price by taking an action such as entering their loyalty card number, swiping a certain type of card, etc. The price displayed on the dispenser will then reflect the discounted price for that motor fuel product.

1. The octane rating of each grade of gasoline is displayed on the upper ~~60~~ 50 percent of each face of each motor fuel dispenser that offers gasoline~~, as prescribed by~~ and meets the requirements of 16 CFR 306; and
2. The signs required by Handbook 130, for ~~gasoline~~ motor fuel dispensers that dispense gasoline with lead substitute, are displayed on the upper ~~60~~ 50 percent of each face of each dispenser in letters at least 1/4" in height.

C. Oxygenated fuel.
1. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.
2. The owner or operator of a motor fuel dispensing site shall ensure that the required label indicates the maximum percent by volume of oxygenate contained in the oxygenated fuel by stating: "May contain up to ___% fuel ethanol."
3. In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that the required label contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (C)(2) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required under subsection (C)(2).
4. The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (C) are:
   a. Displayed on the upper 50 percent of each face of a motor fuel dispenser;
   b. Printed in black or white block letters on a sharply contrasting background; and
   c. Printed with lettering no smaller than 1/4 inch.
5. The owner or operator of a motor fuel dispensing site shall not label gasoline as "non-ethanol containing" if the gasoline contains ~~a detectable amount of~~ more than 1.0 volume percent ethanol.

Commented [CVX3]: Suggest a reasonable limit is specified. Detectable lower limits by ASTM D5599 = 0.1%wt. ASTM D4814 defines a gasoline-ethanol blend as gasoline along with a substantial amount (more than 0.35% by mass oxygen) of ethanol. Ethanol free gasoline could be added to a tank truck containing a heel of E10 and the resulting gasoline could have a detectable level of ethanol.

D. Biodiesel blends. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers biodiesel or biodiesel blends meets the following requirements:
1. The labeling requirements established under A.R.S. § 3-3433(K);
2. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified; and
3. Every motor fuel dispenser that dispenses biodiesel, B99 or B100, or a biodiesel blend containing diesel fuel with a biodiesel percentage greater than five percent by volume shall be labeled with the following information on the upper 50 percent of the front panel of each motor fuel dispenser: "CHECK OWNER'S MANUAL" in a type at least 1/4 inch in height by 1/32 inch stroke and block-style letters of a color that contrasts with the background color.

E. Ethanol flex fuel. The owner of operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers ethanol flex fuel with an ethanol concentration of no less than 51 and no more than 83 volume percent is labeled in accordance with 16 CFR 306.

F. Electricity sold as a motor vehicle fuel. Electricity sole as a motor vehicle fuel shall meet the requirements of Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.34.

G. Premium diesel. Fuel labeled as "premium diesel" shall meet the specifications in R20-2-714(D).

H. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

I. All other motor fuels shall meet the labeling requirements of 16 CFR 306.

J. All dispensers shall have decal that with the Division's name and phone number displayed in the upper 50 percent of the front panel of each dispenser. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. 3-3414(A)(13) satisfies this requirement.

J. All labels required under this section shall be clean, legible, and visible at all times.

R3-7-706. ~~Unattended Retail Dispensers~~ Repealed

~~In addition to all labeling and sign requirements in this Article, an owner or operator of an unstaffed service station shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.~~

R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade as prescribed by 16 CFR 306;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. If ~~Whether~~ a lead substitute is present in the gasoline, ~~and~~ the type of lead substitute present;

9. For a the following biofuel or biofuel blends; ~~the percentage of biofuel in the finished product;~~
   a. Ethanol Flex Fuel shall contain the statement, "Ethanol Flex Fuel, minimum 51% ethanol;
   b. Biodiesel shall contain a declaration of the volume percent biodiesel in the blend, for blends containing more than 5 percent by volume, as well as the grade of diesel in the blend;
   c. Biomass-based diesel containing more than 5 up to 20 percent by volume, shall disclose "contains biomass-based diesel in quantities between 5 percent and 20 percent" as well as the grade of diesel in the blend;
   d. Biomass-based diesel shall contain a declaration of the volume percent biomass-based diesel in the blend, for blends containing more than 20 percent by volume, as well as the grade of diesel in the blend;
   e. All other biofuel or biofuel blends shall contain the percentage of biofuel in the finished product; and;
10. The final destination:
   a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
   c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection ~~(A)(10)~~ (A)(10)(b) and (A)(10)(c), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.

D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the Department's request.

E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.

F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for Department review.

G. The Department shall accept a legible photocopy of a product transfer document instead of the original.

H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with ~~R20-2-757~~ R3-7-757.

R3-7-708. Gasoline ~~Ethanol~~ Oxygenate Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § ~~41-2122~~ 3-3491. The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates.

B. Special provisions for gasoline ethanol blends.
1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
   a. The gasoline ethanol blend shall contain fuel ethanol. The concentration of the fuel ethanol, excluding the required denaturing agent, shall be:
      i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
      ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
   b. The fuel ethanol content of the gasoline ethanol blend shall:
      i. Be determined using the appropriate test method listed in ASTM D4814, and
      ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.
2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. ~~Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:~~
   ~~a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      ~~ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;~~
   ~~b. The finished blend complies with the standards in ASTM D4814; or~~
   ~~c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:~~
      ~~i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and~~
      ~~ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived.~~

Commented [CVX4]: ss R3-1-718.B.3.c provides guidance on appropriate blending of B6 to B20 blends when the initial quantity of biodiesel is not disclosed.

Commented [CVX5]: This range is similar to the FTC requirement for dispenser labeling.

~~4.~~ 3. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in ~~R20-2-707~~ R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

R3-7-709. ~~Retail Oxygenated Fuel Labeling~~ Repealed

~~A. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.~~

~~B. The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60 percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of oxygenate contained in the oxygenated fuel shall state: "May contain up to _____% fuel ethanol."~~

~~C. In the CBG covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).~~

~~D. The owner or operator of a motor fuel dispensing site shall ensure that:~~

~~1. The label required by subsection (B) is clean, legible, and visible at all times;~~

~~2. The label is printed in black or white block letters on a sharply contrasting background; and~~

~~3. The lettering on labels required by subsections (B) and (C) is no less than 1/4".~~

R3-7-710. Blending Requirements

A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.

B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or ~~R20-2-751~~ R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:

1. Add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend;
2. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ ~~41-2122~~ 3-3491, ~~41-2123~~ 3-3492, ~~41-2125~~ 3-3495, or ~~R20-2-751~~ R3-7-751; or
3. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend.

R3-7-711. ~~Alcohol-oxygenated~~ Gasoline-alcohol Blend Storage Tank Requirements

A. Before a person adds ~~an alcohol-oxygenated~~ the initial gasoline-alcohol blend into a storage tank, the person shall:

1. Test the storage tank for the presence of water and, if any water is detected, remove the water from the storage tank; and
2. Install a fuel filter designed for use with ~~alcohol-oxygenated~~ gasoline-alcohol blends in the fuel line of all motor fuel dispensers that dispense ~~alcohol-oxygenated~~ gasoline-alcohol blends.

B. If water is detected in a storage tank ~~or in an alcohol-oxygenated~~ containing a gasoline-alcohol blend ~~in a storage tank~~, the owner or operator shall empty the storage tank.

R3-7-712. Water in Service Station Motor Fuel Storage Tanks

A service station owner or operator shall ensure that water in a service station motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The service station owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

R3-7-713. Motor Fuel Storage Tank Labeling

A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:

1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2 or #2 diesel fuel,
6. Premium diesel,

~~6.~~ 7. Gasoline vapor return,

~~7.~~ 8. Biodiesel or biodiesel blend, for blends containing more than 5 percent by volume, or

~~8.~~ 9. ~~E85~~ Ethanol flex fuel.

B. An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

E. A person shall not deliver motor fuel to a motor fuel dispensing site unless the product transfer documents confirm the motor fuel is the correct type as indicated on the tank fill pipes labeled under subsection (A).

R3-7-714. Requirements for Motor Fuels Other than Arizona CBG

A. A person that owns or operates a motor fuel dispensing site, ~~or~~ transmix, or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale ~~at the motor fuel dispensing site or transmix or production facility~~ meets ~~all~~ the ~~appropriate~~ requirements of the applicable specifications in ~~R20-2-702~~ R3-7-702 except that the maximum vapor pressure of non-ethanol blended gasoline from May 1 through September 30~~, gasoline shall meet the specifications requirements in ASTM D4814 except maximum vapor pressure~~ shall be 9.0 pounds per square inch.

B. The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

C. The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:

1. 87 for unleaded, ~~or~~ regular, Reg, UNL, or UL;
2. ~~88~~ 89 for mid-grade, Mid, Plus, or any other gasoline with an octane rating of 89 or higher ~~extra, or any other gasoline with an octane rating of 88 or higher~~; and
3. ~~90~~ 91 for premium, PREM, super, supreme, high, high performance, or any other gasoline with an octane rating of 91 or higher ~~premium, or any other gasoline with an octane rating of 90 or higher~~.

D. Premium diesel fuel. In addition to meeting the requirements in ASTM D975, all diesel fuels identified as premium diesel on a retail dispenser or product transfer document shall meet the requirements in Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

~~D.~~ E. Prohibited activities regarding a motor fuel sold or offered for sale outside the CBG-covered area.

1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § ~~41-2122~~ 3-3491.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

F. Biofuels and biofuel blends. Biofuel producers, blenders, and biofuel suppliers and owners or operators of motor fuel dispensing sites shall comply with the requirements in R3-7-718.

R3-7-715. Motor Fuel Quality Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the producer of a motor fuel shall test the motor fuel for its motor fuel properties using the methodologies in ~~R20-2-702~~ R3-7-702 and ensure that the motor fuel meets the applicable specifications in the material incorporated by reference in ~~R20-2-702~~ R3-7-702.

B. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the ~~specifications of~~ requirements in ASTM D975.

C. The owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale ~~outside the CBG-covered area~~ has its octane rating determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method. The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale ~~outside the CBG-covered area~~ has its octane rating posted in accordance with 16 CFR 306.

D. A marketer or jobber shall certify the octane rating to the transferee in accordance with 16 CFR 306.

E. Premium diesel shall be certified to meet all performance properties under Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

R3-7-716. Sampling and Access to Records

A. The Department shall obtain motor fuel samples for testing from:

1. The same motor fuel dispenser used for sales to customers;
2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
3. A bulk storage facility;
4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
6. A final distribution facility;
7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
8. An oxygenate blender or registered supplier; or
9. A transmix or production facility.

B. An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, import-

ing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for Department inspection upon request.

R3-7-717. ~~**Hold-open Latch Exception**~~ **Motor Fuel Dispensing Site Equipment**

A. Hold-open latch. If an owner or operator of a motor fuel dispensing site has a dispensing device with a motor fuel nozzle equipped with a hold-open latch, the owner or operator shall ensure that the latch operates according to the manufacturer's specifications.

B. Nozzle requirements for diesel fuel. An owner or operator of a motor fuel dispensing site with a dispensing device from which diesel fuel is sold at retail shall ensure that the dispensing device has a nozzle spout with a diameter that conforms to SAE J285, "Dispenser Nozzle Spouts for Liquid Fuels Intended for Use with Spark Ignition and Compression Ignition Engines."

C. Motor fuel dispenser filters. An owner or operator of a motor fuel dispensing site shall ensure that:

1. All gasoline, gasoline-alcohol blends, and ethanol flex fuel dispensers have a 10 micron or small nominal pore-sized filter.
2. Dispensers that dispense gasoline-alcohol blends shall have fuel filters designed for use with gasoline-alcohol blends; and
3. All biodiesel, biodiesel blends, diesel, and kerosene dispensers have a 30 micron or smaller nominal pore-sized filter.

D. From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have a green grip guard.

R3-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels and Biofuel Blends

A. ~~General~~ Registration and reporting requirements for biofuel blenders, biofuel producers, and biofuel suppliers of biofuel or biofuel blends in Arizona.

1. Registration requirement.
   a. A biofuel producer, biofuel supplier, or ~~person required to register with the EPA under 40 CFR 80, Subpart K or M,~~ blender shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
   c. ~~Consequences of failing~~ If a biofuel producer, biofuel supplier, or blender fails to register under subsection (A)(1)(a), the Director shall take action as allowed under A.R.S. § 3-3475 and R3-7-762.
      ~~i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and~~
      ~~ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R20-2-762.~~
   d. The Department shall maintain and make available to the public a list of all persons registered under this Section.
2. Reporting requirement.
   a. A person required to register under subsection (A)(1)(a) shall report to the Department by ~~the 15th of the month after producing or supplying biofuel or biofuel blend~~ January 30th of each year for the previous calendar year. The person shall:
      i. Report on a form or in a format prescribed by the Director;
      ii. Provide the ~~information specified in subsections (B) and (C), as applicable~~ total amount of biofuel or biofuel blend produced or supplied in each calendar month, including the total amount of each blend component;
      iii. Attest to the truthfulness and accuracy of the information submitted;
      iv. ~~Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article;~~ and
      ~~v.~~ Ensure that the report form is signed or submitted electronically by a corporate officer, or the officer's designee, responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.
   b. The Department shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.

~~3.~~B. Quality Assurance and Quality Control (QA/QC) program ~~requirement~~ requirements.

~~a.~~1. A ~~person required to register under subsection (A)(1)(a)~~ biofuel producer or blender shall ~~develop~~ implement a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona~~.~~;

~~b.~~2. ~~A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the~~ The QA/QC program ~~in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual~~ implemented by a biofuel or biodiesel producer shall include the following minimum requirements:

~~i.~~a. ~~Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer specific requirements~~ A sampling and testing program to certify that the biofuel meets applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods;

~~ii.~~b. ~~Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied~~ A Certificate of Analysis with a unique identification number generated for each batch produced and indicated on the product transfer document;

~~iii.~~c. ~~Contains procedures that will be used to determine and document that operational quality requirements are met; and~~ The Certificate of Analysis required under subsection (B)(2)(b) and any other supporting sampling and testing documentation required under this Section is made available to the Department within 24 hours of a request;

~~iv.~~d. ~~Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.~~ Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and

e. A sample of each batch produced is retained and maintained for at least 60 days following production of the batch;

~~c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.~~

~~d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.~~

3. The QA/QC program implemented by a biofuel blender shall include the following minimum requirements:

a. Retention of:

i. Documentation that demonstrates the applicable biofuel blend components were received from a facility registered with the EPA under 40 CFR 80, subpart K or M;

ii. Certificates of Analysis for the biofuel used as a blend component in the blending process; and

iii. Documentation such as a product transfer document that demonstrates the diesel fuel used in the blending process meets the requirements of ASTM D975;

b. A sampling and testing program that ensures or, as applicable, certifies that the biofuel blends produced meet applicable ASTM requirements. All samples shall be collected following addition of any applicable blend components in accordance with ASTM methods and shall be retained for 30 days following collection;

c. For biodiesel blending, all diesel fuel used as a blend component is analyzed to verify the biodiesel content before blending if the initial volume percent of biodiesel content in the diesel fuel component is unknown; alternatively, for biodiesel blends blended at a motor fuel dispensing site, the blender may assume the diesel contains 5% biodiesel and prepare and maintain calculations demonstrating the biodiesel content of the final biodiesel blend if it is advertised to consumers as a B6 to B20 biodiesel blend and the calculations demonstrate the biodiesel blend will be compliant with the biodiesel content advertised;

d. Any storage tank containing biofuel that is inactive for more than 30 days is resampled and analyzed to verify the fuel meets ASTM standards; and

e. All biodiesel used as a blend component in biodiesel blends consists of at least 99 percent biodiesel unless approved by the Department; and

4. All records required under this subsection are maintained either onsite or at an offsite location for at least five years and made available to the Department upon request.

5. In the event the Department identified biofuel or biofuel blends that do not meet ASTM requirements, the producer or blender shall evaluate the QA/QC program and make any additional changes that may be required to bring the fuel into compliance.

~~B. Specific requirements for producers or suppliers of E85.~~

~~1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:~~

~~a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:~~

~~i. Indicate E85 is not gasoline,~~

~~ii. Indicate E85 is intended for use only in a flexible fuel vehicle, and~~

~~iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle," and~~

~~b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.~~

~~2. Additional requirement for producing E85 for sale in the CBG covered area. A producer of E85 for sale in the CBG covered area shall:~~

~~a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and~~

~~b. Ensure that the fuel ethanol used meets the standards in this Chapter.~~

~~3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:~~

~~a. The amount of fuel ethanol used to produce E85 in the previous month,~~

~~b. The amount of gasoline used to produce E85 in the previous month,~~

~~c. The total amount of E85 produced during the previous month,~~

~~d. The following fuel quality properties for the finished E85:~~

~~i. Appearance,~~

~~ii. American Petroleum Institute gravity,~~

~~iii. Organic chloride,~~

~~iv. Water content,~~

~~v. Vapor pressure, and~~

~~vi. Sulfur content.~~

~~4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:~~

~~a. The amount of E85 sold during the previous month; and~~

~~b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~

~~5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each fa-~~

~~cility within the person's operation at which E85 is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:~~

~~a. All samples of E85 are collected after any applicable blend component is added;~~

~~b. All samples of E85 are collected using approved ASTM methods;~~

~~c. Sampling is done at one of the following rates:~~

~~i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;~~

~~ii. If E85 is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;~~

~~iii. If E85 is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;~~

~~d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798;~~

~~e. Test results are used to certify the quality of the E85 produced;~~

~~f. Sample handling and storage procedures are specified, and~~

~~g. Sample retention time frames are specified.~~

~~6. Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:~~

~~a. Notify the Director of the test results;~~

~~b. Take all reasonable steps to stop the sale of the non-compliant E85, and~~

~~c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.~~

~~C. Specific requirements for producers or suppliers of biodiesel and biodiesel blends.~~

~~1. A person shall not sell or offer or expose for sale:~~

~~a. Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751;~~

~~b. Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and~~

~~c. A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.~~

~~2. The owner or operator of a motor fuel dispensing site shall ensure that:~~

~~a. Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:~~

~~i. Meets the labeling requirements established by A.R.S. § 41-2083(L);~~

~~ii. Is compatible with biodiesel or biodiesel blend, and~~

~~iii. Meets all requirements in this Chapter and A.R.S. § 41-2083; and~~

~~b. Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~

~~3. Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG covered area. A producer of biodiesel or biodiesel blend for sale in the CBG covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.~~

~~4. Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:~~

~~a. The total amount of biodiesel or biodiesel blend produced in the previous month;~~

~~b. The amount of biodiesel used to produce a biodiesel blend in the previous month;~~

~~c. The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:~~

~~i. Flash point;~~

~~ii. Water sediment;~~

~~iii. Sulfur content;~~

~~iv. Cold soak filterability;~~

~~v. Cloud point;~~

~~vi. Acid number;~~

~~vii. Free glycerin;~~

~~viii. Total glycerin; and~~

~~ix. Distillation, 90 percent; and~~

~~d. The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:~~

~~i. Sulfur content;~~

~~ii. Aromatic hydrocarbon content;~~

~~iii. Cetane index;~~

~~iv. Acid number;~~

~~v. Distillation, and~~

~~vi. American Petroleum Institute gravity.~~

~~5. Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:~~

~~a. The amount of biodiesel or biodiesel blend sold during the previous month; and~~

~~b. A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).~~

~~6. Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:~~

~~a. All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;~~

~~b. All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;~~

~~c. Sampling is done at one of the following rates:~~

~~i. If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;~~

~~ii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;~~

~~iii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;~~

~~d. All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;~~

~~e. Test results are used to certify the quality of the biodiesel or biodiesel blend produced;~~

~~f. Sample handling and storage procedures are specified; and~~

~~g. Sample retention time frames are specified.~~

~~7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.~~

~~8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:~~

~~a. Notify the Director of the test results;~~

~~b. Take all reasonable steps to stop the sale of the non-compliant biodiesel or biodiesel blend, and~~

~~c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.~~

~~D. Specific requirements for producers or suppliers of petroleum based renewable diesel. A producer or supplier of petroleum based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:~~

~~1. Meets the standards in ASTM D975, and~~

~~2. Is identified as specified in R20-2-701.~~

C. Biofuel standards and testing methodologies

1. Ethanol flex fuel. A person shall not sell, offer, or expose for sale ethanol flex fuel unless the following requirements are met:

a. Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the ethanol flex fuel meets the requirements in ASTM D5798; and

b. Ethanol flex fuel sold or offered for sale within the CBG-covered area:

i. Uses Arizona CBG or AZRBOB as the hydrocarbon component to meet the requirements in ASTM D5798,

ii. Uses fuel ethanol that meets the standards in this Chapter, and

iii. Has a maximum vapor pressure that does not exceed the maximum vapor pressure requirements in R3-7-751(A)(6).

2. Biodiesel and biodiesel blends. A person shall not sell, offer, or expose for sale biodiesel or biodiesel blends unless the following requirements are met:

a. Biodiesel meets the requirements in ASTM D6751,

b. A biodiesel blend containing more than five percent by volume but less than 20 percent by volume biodiesel by volume meets the requirements in ASTM D7467, and

c. If a biodiesel blend contains more than 20 percent biodiesel by volume, the diesel fuel used in the blend meets the requirements in ASTM D975 and the biodiesel blend stock meets the requirements in ASTM D6751.

3. Non-compliant biofuel and biofuel blends. If a test result for a biofuel or biofuel blend shipped from a facility indicates the biofuel or biofuel blend does not comply with the requirements of this Chapter, the biofuel producer or blender shall:
   a. Notify the Director within 24 hours of identification of the non-compliant biofuel or biofuel blend,
   b. Immediately take all reasonable steps to stop sale of the non-compliant biofuel or biofuel blend, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and prevent future occurrences of noncompliance.

D. Requirements for motor fuel dispensing sites.
1. The owner or operator of a motor fuel dispensing site at which ethanol flex fuel is dispensed shall ensure that:
   a. All dispensers are labeled as required under R3-7-705(E);
   b. After September 30, 2018, all retail ethanol flex fuel dispensers are equipped with nozzles having yellow grip guards and no other product nozzles have yellow grip guards;
   c. Any motor fuel dispenser from which ethanol flex fuel is dispensed is compatible with ethanol flex fuel and meets the requirements of this Chapter and A.R.S. § 3-3433; and
   d. Any ethanol flex fuel sold, offered or exposed for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1) or the Environmental Protection Agency under 40 CFR 80, subparts K or M.
2. The owner or operator of a motor fuel dispensing site from which biodiesel or biodiesel blend is dispensed shall ensure that:
   a. All dispensers are labeled as required under R3-7-705(D);
   b. All dispensers from which biodiesel or biodiesel blend is dispensed are compatible with biodiesel or biodiesel blend and meet the requirements of this Chapter and A.R.S. § 3-3433; and
   c. Any biodiesel or biodiesel blend sold, offered or exposed for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).

E. Exemptions.
1. A biofuel producer, biofuel supplier, or blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or blender located within Arizona is not required to register under subsection (A)(1)(a).
2. Diesel fuel containing five percent by volume or less biodiesel is exempt from this Section if the following conditions are met:
   a. The diesel fuel meets the standards of ASTM D975; and
   b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
3. A biofuel producer, biofuel supplier, or blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section.
4. Gasoline containing up to 10 percent ethanol is exempt from this section.

R3-7-719. Repealed

R3-7-720. Renumbered

R3-7-721. Renumbered

R3-7-722. Reserved
through
R3-7-748. Reserved

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to ~~R20-3-750~~ R3-7-750 through ~~R20-2-762~~ R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the Director under A.R.S. § ~~41-2124~~ 3-3493, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in ~~R20-2-702~~ R3-7-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in ~~R20-2-759~~ R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the Director under ~~R20-2-750~~ R3-7-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter.

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in ~~R20-2-751(A)~~ R3-7-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I), and meets the requirements in:

~~R20-2-751(A)~~ R3-7-751(A) beginning April 1 through October 31 of each year, and

~~R20-2-751(B)~~ R3-7-751(B) beginning November 1 through March 31 of each year.

"Winter" means November 1 through March 31.

R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the Director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
   1. A refiner that produces Arizona CBG or AZRBOB;
   2. An importer that imports Arizona CBG or AZRBOB;

3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the Director and include the following information:
1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
   a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
   b. If an independent laboratory is used to meet the requirements of ~~R20-2-752(F)~~ R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the Department or its authorized agent to collect samples and access records as provided in ~~R20-2-716~~ R3-7-716.

C. A person registered under subsection (B) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.

E. The Department shall maintain a list of all registered suppliers.

R3-7-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.
1. Sulfur: 500 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: 70-30 percent volume.
5. E300: 100-70 percent volume.
6. Maximum vapor pressure:
   a. October: 9.0 psi.
   b. November 1 - March 31: 9.0 psi.
   c. April: 10.0 psi.
   d. May: 9.0 psi.
   e. June 1 - September 30: 7.0 psi.
   f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in ~~R20-2-708(B)~~ R3-7-708(B), during April only.
7. Oxygen and oxygenates:
   a. Minimum content:
      i. November 1 - March 31: 10 percent fuel ethanol by volume. If A.R.S. § ~~41-2124(E)~~ 3-3493(E) petition in effect: 2.7 percent oxygen by weight as approved by the Director.
      ii. April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § ~~41-2122~~ 3-3491 for other oxygenates, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § ~~41-2122~~ 3-3491.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: ≥ 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.
1. Sulfur: 80 ppm by weight (max),
2. Aromatics: 30% by volume (max),
3. Olefins: 10% by volume (max),
4. 90% Distillation Temp. (T90): 330° F (max),
5. 50% Distillation Temp. (T50): 220° F (max),
6. Vapor Pressure: 9.0 psi (max), and
7. Oxygenate - Ethanol;

a. Minimum oxygenate content - 10 percent fuel ethanol by volume;
b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § ~~41-2123~~ 3-3492; and
c. Alternative minimum fuel ethanol content may be used if approved by the Director under A.R.S. § ~~41-2124(D)~~ 3-3493(D).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D4806 and the following:
1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with ~~R20-2-760~~ R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements, and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under ~~R20-2-752~~ R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in ~~R20-2-702~~ R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Department approves using the criteria stated in ~~R20-2-759~~ R3-7-759.

H. Certification and use of Predictive Model for alternative PM gasoline formulations.
1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the Director by either:
a. Submitting to the Director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
b. Notifying the Director, on a form prescribed by or in a format acceptable to the Director, of:
i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. A registered supplier shall deliver the certification required under subsection (H)(2) to the Director before transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;

ii. There are no changes to the PM alternative specifications for remaining fuel properties; and

iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.

c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).

d. If a registered supplier notifies the Director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:

i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or

ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations.

A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under ~~R20-2-752~~ R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:
   a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or
   b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period.

L. Consequence of failure to comply with averages.

1. In addition to a penalty under ~~R20-2-762~~ R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:
   a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;
   b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.
2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:
   a. The registered supplier submits a compliance plan to the Director that includes:
      i. An implementation schedule for actions to correct noncompliance, and
      ii. Reporting requirements that document implementation of the compliance plan,
   b. The Director approves the plan,
   c. The registered supplier implements the plan, and
   d. The registered supplier achieves compliance.

3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.
   a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.
   b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period.
4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under ~~R20-2-760~~ R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NOx survey failure. Each time a NOx survey conducted under ~~R20-2-760~~ R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:
   1. >27 percent for the VOC emissions reduction percentage, May 1 - September 15, Table 1, column C; and
   2. >6.8 percent for the NOx emissions reduction percentage, May 1 - September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:
   1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in ~~R20-2-751(A)(8)~~ R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
   2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
   3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

R3-7-751.01. Repealed

R3-7-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. B. A registered supplier shall make the certification on a form or in a format prescribed by the Director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under ~~R20-2-759~~ R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the Director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.
   1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
      a. Sample date;
      b. Identity of blend or product sampled;
      c. Container or other vessel sampled;
      d. The final blend or shipment volume; and
      e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under ~~R20-2-759~~ R3-7-759.
   2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the Director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in ~~R20-2-751~~ R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
   3. A registered supplier shall provide to the Director any records maintained by the registered supplier under this Section within 20 days of a written request from the Director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the Director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of ~~R20-2-751~~

R3-7-751, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the Director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with ~~R20-2-759~~ R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the original quality objectives. The Director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
   a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in ~~R20-2-759~~ R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
   b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      i. An independent laboratory shall collect a representative sample from each batch;
      ii. The Director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
      iii. The independent laboratory shall, for each sample identified by the Director or designee, analyze the sample using the methodology specified in ~~R20-2-759~~ R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The Director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the Director or designee. The registered supplier shall submit a duplicate of the sample to the Director within 24 hours of the written request.
3. Designation of independent laboratory.
   a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
   b. A registered supplier shall identify the designated independent laboratory to the Director under the registration requirements of ~~R20-2-750~~ R3-7-750.
   c. A laboratory is considered independent if:
      i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
      ii. The laboratory does not have any interest in any registered supplier, and
      iii. The registered supplier does not have any interest in the designated laboratory.
   d. Notwithstanding the restrictions in subsection (F)(3)(c), the Director shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.
   e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.
4. A registered supplier shall ensure that its designated independent laboratory:
   a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      i. The producer's or importer's assigned batch number for the batch sampled;
      ii. The volume of the batch;
      iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      iv. The date and time the batch became Arizona CBG or AZRBOB;
      v. The date and time the sample is collected;
      vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
   b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the Director for up to 180 days;

c. Submits to the Director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
   i. The results of the independent laboratory's analyses for each fuel property, and
   ii. The information specified in subsection (F)(4)(a) for each sample; and
d. Supplies to the Director, upon request, a duplicate of the sample.

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the Director by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.
1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
   a. Sulfur content: 25 ppm by weight,
   b. Aromatics: 2.7% by volume,
   c. Olefins: 2.5% by volume,
   d. Fuel ethanol: 0.4% by volume,
   e. Vapor pressure: 0.3 psi,
   f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
   h. E200: 2.5% by volume,
   i. E300: 3.5% by volume, or
   j. API gravity: 0.3° API.
2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
   a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
   b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

R3-7-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Department under ~~R20-2-750~~ R3-7-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the Director.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

D. A pipeline shall provide the Director with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the Director by fax within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the Director by fax within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B), as applicable.

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in ~~R20-2-751(A)~~ R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the Director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the pipeline's or third-party terminal's

laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Department. The Director shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in ~~R20-2-752~~ R3-7-752 and oxygenate blenders in ~~R20-2-755~~ R3-7-755, as applicable.

I. A pipeline is not liable under ~~R20-2-761~~ R3-7-761 if it follows all of the procedures in this Section.

R3-7-754. Downstream Blending Exceptions for Transmix

A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. One of two methods shall be used to measure the transmix as it is blended into the product stream:

1. Meters, calibrated at least twice each year; or
2. Tank gauge as per API Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Department. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.

1. Determining whether AZRBOB complies with Arizona CBG standards.
   a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in ~~R20-2-759~~ R3-7-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Department shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding fuel ethanol to the AZRBOB.
   b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the fuel ethanol added to the representative sample under subsection (A)(1)(a) is representative of the fuel ethanol the registered supplier reasonably expects will be subsequently added to the AZRBOB.
2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under ~~R20-2-751~~ R3-7-751 by adding the minimum amount of fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Department shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.

1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
   a. The transferee is a registered oxygenate blender and will add fuel ethanol in the amount (or within the range of amounts) designated in ~~R20-2-757~~ R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
   b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the amount (or within the range of amounts) of fuel ethanol designated in ~~R20-2-757~~ R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
2. A person shall not sell or supply Arizona CBG from a final distribution facility if the amount or range of amounts of fuel ethanol designated in ~~R20-2-757~~ R3-7-757 has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:

1. Fuel ethanol in the amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1)

through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.

1. 40 CFR 80.69(a)(7). The word "RBOB" is changed to read "AZRBOB";
2. 40 CFR 80.69(a)(7). "...using the methodology specified in § 80.46..." is changed to read "...using the methodology specified in ~~R20-2-759~~ R3-7-759...;" and
3. 40 CFR 80.69(a)(7)(ii). "(within the correlation ranges specified in § 80.65(e)(2)(i))" is changed to read "(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:

1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the Director under subsection (G);
3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in ~~R20-2-759~~ R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the Director to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the Director, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a Department official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the Director within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the Director under subsection (G) and the results are accurate;
    c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    d. Identification of the area from which the samples were collected;
    e. Address of each motor fuel dispensing site from which a sample was collected;
    f. Dates on which the samples were collected;
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. Name and address of each laboratory at which the samples were analyzed;
    i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    j. Number of samples collected at each motor fuel dispensing site; and
    k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the Director. The Director shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the Director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:

1. Submit the plan to the Director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the Director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.

1. Requirement to add fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB in the amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending fuel ethanol with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or

bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in ~~R20-2-759~~ R3-7-759.

3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
   a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"
   b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in ~~R20-2-759~~ R3-7-759...;" and
   c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."
4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
   a. An oxygenate blender that produces Arizona CBG by blending fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
      i. Obtain a flow proportional composite sample after the addition of fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;
      ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within 24 hours of blending using the methodology in ~~R20-2-759~~ R3-7-759; and
      iii. Determine the volume of the resulting Arizona CBG.
   b. If the test results for the Arizona CBG indicate that it does not contain the amount of fuel ethanol specified by the ranges of the applicable test methods, the oxygenate blender shall:
      i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
      ii. Begin an investigation to determine the cause of the noncompliance;
      iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and fuel ethanol, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
      iv. Notify the Director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
   c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the Director determines that the corrective action has remedied the noncompliance.
5. Recordkeeping and records retention.
   a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
      i. Sample date,
      ii. Identity of blend or product sampled,
      iii. Container or other vessel sampled,
      iv. Volume of final blend or shipment,
      v. Oxygen content as determined under ~~R20-2-759~~ R3-7-759, and
      vi. Results from all testing.
   b. The Director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in ~~R20-2-751~~ R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards in ~~R20-2-751~~ R3-7-751.
   c. Within 20 days of the Director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the Director shall deem that the blend or shipment of Arizona CBG violates ~~R20-2-751~~ R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards and limits under ~~R20-2-751~~ R3-7-751.
6. Notification requirement. An oxygenate blender shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the Director for approval at least three months before transporting Arizona CBG. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of ~~R20-2-752(F)~~ R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).
8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in ~~R20-2-752(F)~~ R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).

9. Within 24 hours of the Director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the Director:
   1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
   2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
   3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in ~~R20-2-751(A)~~ R3-7-751(A) or (B) if the person obtains prior written approval from the Director based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Department.

R3-7-757. Product Transfer Documentation; Records Retention

A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:
   1. Volume of Arizona CBG or AZRBOB being transferred;
   2. Location of the Arizona CBG or AZRBOB at the time of transfer;
   3. Date of the transfer;
   4. Product transfer document number;
   5. Identification of the gasoline as Arizona CBG or AZRBOB;
   6. Minimum octane rating of the Arizona CBG or AZRBOB;
   7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the minimum quantity of fuel ethanol contained in the Arizona CBG;
   8. If the product transferred is AZRBOB for which fuel ethanol blending is intended:
      a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of fuel ethanol";
      b. Designation of the AZRBOB as suitable for blending with fuel ethanol;
      c. Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent fuel ethanol and weight percent oxygen content; and
      d. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for fuel ethanol amount or range of amounts; and
   9. The final destination:
      a. When a terminal is the transferor, the owner or the operator of the product transfer document the terminal name and address~~,~~ and the transporter name and address~~, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site~~;
      b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
      c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.

E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.

F. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product

transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.

G. When a person transfers custody or title of fuel ethanol that is intended for use as a blend component in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the fuel ethanol complies with the standards for fuel ethanol intended for use as a blend component in AZRBOB or Arizona CBG.

H. Upon request by the Director or designee, a person shall present product transfer documents to the Department within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

R3-7-758. Repealed

R3-7-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure fuel ethanol in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. A test method that the Department determines is equivalent to those listed in Table A may be used to certify Arizona CBG or AZRBOB. The Department has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Department shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Department shall approve a proposed test method only if the Department determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

Table A. Arizona Department of Weights and Measures Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)[A]	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	$0.1409\ (X)^{1.133}$
Olefins	V%	D1319-02a (2003)	$0.32\ (x)^{0.5}$	D6550-00 (2005) if correlated to D1319	$0.32\ (X)^{0.5}$; Footnote 1
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004)[B]	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	$0.2217\ (x)^{0.92}$ wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).
[B] A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).
Footnotes:
1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."
2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

R3-7-760. Compliance Surveys

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under ~~R20-2-751~~ R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the Director. The Director shall approve a compliance survey program plan if it:
   1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
   2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the Director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the Director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
   1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
   2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
   3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic hydrocarbons, E200, E300, and vapor pressure according to the test methods in ~~R20-2-759~~ R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;
   4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
   5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the Director to ensure the validity of analysis results.

D. If the Director determines that a sample used in a compliance survey does not comply with ~~R20-2-751~~ R3-7-751 or another requirement under this Article, the Director shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements:
   1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in ~~R20-2-702~~ R3-7-702;
   2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
   3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted between May 1 and September 15 as follows:
   1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in ~~R20-2-702~~ R3-7-702; and
   2. The CBG-covered area fails the NOx series of compliance surveys conducted between May 1 and September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The Director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:
   1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
      a. The surveyor shall not be an employee of any registered supplier,
      b. The surveyor shall not have an obligation to or interest in any registered supplier, and

c. The registered supplier shall not have an obligation to or interest in the surveyor;

2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the Director, within 30 days following submission of the survey report required under subsection (G)(6);
5. Requires that the surveyor permit a Department official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the surveyor to submit a report of each survey to the Director within 30 days after sampling for the survey is completed that includes the following information:
   a. Name of the person conducting the survey;
   b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
   c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
   d. Identification of the area from which survey samples were selected;
   e. Dates on which the survey was conducted;
   f. Address of each facility at which a sample was collected, and the date of collection;
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. Name and address of each laboratory at which samples were analyzed;
   i. Description of the method used to select the facilities from which a sample was collected;
   j. Number of samples collected from each facility;
   k. Justification for excluding a collected sample from the survey, if one was excluded; and
   l. Average VOC and NOx emissions reduction percentage.

H. An independent surveyor shall begin each survey on a date selected by the Director. The Director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.

I. To obtain the Director's approval of a compliance survey program plan, the person seeking approval shall:
   1. Submit the plan to the Director no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
   2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.

J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the Director a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with ~~R20-2-751~~ R3-7-751, the following are liable for the violation:
   1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
   2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
   3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.
   1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
      a. That the violation was not caused by the person or person's employee or agent;
      b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
      c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.

2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
   a. A violation of law other than A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 6, this Article, or an act of sabotage or vandalism;
   b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
   c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a service station or fleet owner facility, a person shall present evidence:
1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in ~~R20-2-751~~ R3-7-751; and
2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in ~~R20-2-751~~ R3-7-751:
   a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
   b. The person remedies the violation as soon as practicable.

R3-7-762. Penalties

Any person who violates any provision of this Article is subject to the following:
1. Prosecution for a Class 2 misdemeanor under A.R.S. § ~~41-2113(B)(4)~~ 3-3473(B)(4);
2. Civil penalties in the amount of $500 per violation under A.R.S. § ~~41-2115~~ 3-3475; and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § ~~41-2066(A)(2)~~ 3-3415(A)(2).

Table 1. Type 1 Arizona CBG Standards

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 - Sept. 15	≥ 27.5	≥ 29.0	≥ 25.0	N/A
NOx Emission Reduction (%) May 1 - Sept. 15	≥ 5.5	≥ 6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	≥ 0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	N/A 0.0*	N/A N/A	N/A 0.0	N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	N/A 0.0	N/A N/A	N/A 0.0	N/A ****

* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § ~~41-2122~~ 3-3491.
** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility.
*** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31.
**** As specified in A.R.S. § ~~41-2122~~ 3-3491.

Table 2. Type 2 Arizona CBG Standards

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol** November 1 - March 31	10% fuel ethanol**	–	10% fuel ethanol**	% by vol.
April 1 - October 31		–		
The maximum oxygen content EtOH year around			4.0	% by weight

* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and ~~R20-2-751(G)~~ R3-7-751(G), (H), and (I) for the use of the PM.
** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements.
A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through March 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the Director under A.R.S. § ~~41-2124(D)~~ 3-3493.
NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.

Table 3. **Repealed**

ARTICLE 8. REPEALED

R3-7-801. **Repealed**

R3-7-802. **Repealed**

R3-7-803. **Repealed**

R3-7-804. **Repealed**

R3-7-805. **Repealed**

R3-7-806. **Repealed**

R3-7-807. **Repealed**

R3-7-808. **Reserved**

R3-7-809. **Repealed**

R3-7-810. **Repealed**

R3-7-811. **Repealed**

R3-7-812. **Repealed**

ARTICLE 9. GASOLINE VAPOR CONTROL

R3-7-901. **Material Incorporated by Reference**

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:

1. Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA-450/3-91-022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. The following CARB test procedures:
   a. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   b. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   c. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   d. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
   e. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

h. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-902. Exemptions

A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with ~~R20-2-913~~ R3-7-913 or that is subject to A.R.S. § ~~41-2132~~ 3-3512, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.

B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § ~~41-2135(B)~~ 3-3415(B) may obtain an exemption by submitting a written request to the Department attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § ~~41-2135(B)~~ 3-3415(B). By the 15th of each month, beginning the month after the Department approves the exemption, the person shall submit a written throughput report to the Department. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Department deems the exemption void.

C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the Department. The Department shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:

1. Purchase and sale of diesel fuel, and
2. State lottery sales net commissions and incentives.

D. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

R3-7-903. Equipment and Installation

A. A person subject to A.R.S. § ~~41-2135~~ 3-3415 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with ~~R20-2-913~~ R3-7-913.

B. The Department shall reject a vapor recovery system or component from future installation if:

1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in ~~R20-2-901~~ R3-7-901; or
3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

C. The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under ~~R20-2-904~~ R3-7-904.

D. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

E. A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:

1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage II vapor recovery system;
2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
3. Replacing a Department-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the Department a written change order to an authority to construct plan approval on a form provided by the Department if a modification of the approved vapor recovery system or component is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
   1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
   2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
   3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
   4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
   5. The application fee specified under ~~R20-2-906~~ R3-7-906.

D. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
   1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
   2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
   3. An authority to construct plan approval is not transferable.

E. The Department shall deny an authority to construct plan for any of the following reasons:
   1. Providing incomplete, false, or misleading information; or
   2. Failing to meet the requirements stated in this Chapter.

F. If excavation is involved, the Department may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete. The Department shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to ~~R20-2-905~~ R3-7-905.

H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the Department at a time approved by the Department and include any of the following relevant to the specific vapor recovery system installed:
   1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
   2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in ~~R20-2-901(1)~~ R3-7-901(1) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in ~~R20-2-901(2)~~ R3-7-901(2) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Department shall compute combined tank vapor space for manifolded systems;
   3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
   4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
   5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
   6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
   7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and
   8. Procedures specified by a manufacturer for testing the vapor recovery system.

B. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
   1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
   2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.

3. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

R3-7-906. Fee

A. The authority to construct plan approval fee is $250.

R3-7-907. Operation

A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:

1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
2. When more than 1/4 of the cone is missing for vapor assist systems having bellowless nozzles with flexible vapor deflecting cones;
3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;
4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;
8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
10. A dispenser mounted vacuum pump that is not functioning;
11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
    b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
    c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;
    d. Does not swivel at the hose/nozzle connection; or
    e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;
12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;
13. The stage I installation is not properly installed or maintained, in that:
    a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;
    b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
    c. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or
    d. A fill tube is missing, not sealed, has holes, broken or damaged overfill preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;
14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;

15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
17. A vacuum assist system with an inoperative central vacuum unit;
18. A vacuum assist system with an inoperative vapor processing (burner) unit;
19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or
20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.

E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § ~~41-2135(E)~~ 3-3515(E) and this Article.

F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the Department by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the Department.

G. For proper operation of a stage I system, under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-908. Training and Public Education

A. Each operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated and maintained properly in accordance with the manufacturer's specifications and CARB certification. The operator shall maintain documentation of this training on-site and make the documentation available to the Department on request.

B. In addition to the information required in A.R.S. § ~~41-2135(E)~~ 3-3515(E), an operator of a gasoline dispensing site with stage II vapor recovery shall display a Department telephone number that the public can call to report nozzle or other equipment problems. The operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal signs, and from up to 6 feet away for permanent (non-decal) signs. Decals shall be located on the upper 60% of each face of each dispenser.

R3-7-909. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2135(B)~~ 3-3515(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the Department as required under ~~R20-2-902(B)~~ R3-7-902(B). If any throughput requirement provided in A.R.S. § ~~41-2135(B)~~ 3-3515(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.

D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

R3-7-910. Annual Inspection and Testing

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in ~~R20-2-905(A)(1)~~ R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).

E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Department issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered

service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

R3-7-911. Compliance Inspections

The Department shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in ~~R20-2-910~~ R3-7-910.

R3-7-912. Enforcement

If the Department finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-913. Stage II Decommissioning

A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:
   1. If the owner or operator holds a license issued by the Department numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
   2. If the owner or operator holds a license issued by the Department numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the Department for approval no later than December 31, 2015.
   1. An owner or operator that holds licenses issued by the Department for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
   2. An owner or operator that holds licenses issued by the Department for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).

C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):
   1. The business name and mailing address on all licenses;
   2. The name and telephone number of an individual with whom the Department can communicate;
   3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
   4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
   5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
      a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
      b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.

D. The Department shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The Department shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are replaced as indicated on the request for approval under subsection (C)(4). The Department may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;

E. The owner or operator of a gasoline dispensing site that is exempt under ~~R20-2-902~~ R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;

F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the Department, is submitted to the Department at least 10 days before the planned decommissioning and includes the following information:
   1. Name of the owner or operator of the gasoline dispensing site,
   2. Address of the gasoline dispensing site,
   3. Name of the decommissioning contractor,
   4. Decommissioning dates,
   5. Name of the vapor testing registered service representative, and

6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.

G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the Department receives the changed information at least 24 hours before the scheduled start of decommissioning.

H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in ~~R20-2-901(4)~~ R3-7-901(4) with the following exceptions:
   1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
   2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and
   3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in ~~R20-2-1005(A)(1)~~ R3-7-1005(A)(1).

I. The decommissioning contractor shall:
   1. Complete a Decommissioning Checklist using a form or format provided by the Department,
   2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
   3. Submit a copy of the completed Decommissioning Checklist to the Department within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.

J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under ~~R20-2-910~~ R3-7-910 but shall be subject to the initial inspection and testing prescribed under ~~R20-2-1005~~ R3-7-1005 within 60 days after decommissioning is complete.

K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.

L. The Department shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § ~~41-2115~~ 3-3475 on the owner or operator of the gasoline dispensing site.

ARTICLE 10. STAGE I VAPOR RECOVERY

R3-7-1001. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:

1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
5. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3, Determination of 2 Inch WC Static Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, July 26, 2012 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

R3-7-1002. Exemptions

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with ~~R20-2-913~~ R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Department, using a form prescribed by the Department, no later than March 30 of each year and attest to the throughput during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § ~~41-2132(B)~~ 3-3512(B) was exceeded, the Department shall deem the exemption void.

R3-7-1003. Equipment and Installation

A. The Department shall reject a vapor recovery system or component from future installation if:
   1. Federal regulations prohibit its use;
   2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in ~~R20-2-1001~~ R3-7-1001; or

3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under ~~R20-2-1004~~ R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Department as required under A.R.S. § ~~41-2132~~ 3-3512.

C. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
   1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage I vapor recovery system;
   2. Modifying, adding, or replacing underground vent piping; or
   3. Conducting construction under ~~R20-2-913(H)(2)~~ R3-7-913(H)(2).

B. A person shall file with the Department a written change order, using a form provided by the Department, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
   1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
   2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
   3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
   4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
   5. The application fee specified under ~~R20-2-1006~~ R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
   1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
   2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
   3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
   4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
   5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
   6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
   7. Has tank vent pipes with a minimum inside diameter of:
      a. Two inches if the pipe is not manifolded, or
      b. Three inches from the point of manifold if the pipe is manifolded;
   8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
   9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
   10. Has a one-eighth inch threaded tap on the vent pipe between six and eight feet above ground level;
   11. Has risers into gasoline storage tanks that are capped with UL-approved caps;
   12. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
   13. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY *88*/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and
   14. Complies with other requirements outlined in the authority to construct permit.

E. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.

1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

F. The Department shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the Department may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The Department may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to ~~R20-2-1005~~ R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

R3-7-1005. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the Department at a time approved by the Department and include the following tests:
1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
3. A Tie-Tank test using CARB TP-201.3C test procedure; and
4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.

B. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.

R3-7-1006. Fee

The authority to construct plan approval fee is $250.

R3-7-1007. Operation

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Department approval under A.R.S. § ~~41-2132~~ 3-3512 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or component if one or more of the following system or component defects occur:
1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;

2. Vent pipes do not meet the CARB-specified paint color code specified in ~~R20-2-1004(D)(13)~~ R3-7-1004(D)(13);
3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
   a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
   b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
   c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
   d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.

E. For proper operation of a stage I system under A.R.S. § ~~41-2132(C)(4)~~ 3-3512(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

R3-7-1008. Training and Public Education

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training on-site and make the documentation available to the Department on request.

R3-7-1009. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under ~~R20-2-1007~~ R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § ~~41-2132(B)~~ 3-3512(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Department within 24 hours after request. The owner or operator shall submit to the Department the throughput information required under ~~R20-2-1002(B)~~ R3-7-1002(B). If any throughput requirement provided in A.R.S. § ~~41-2132(B)~~ 3-3512(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under ~~R20-2-1010~~ R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under ~~R20-2-913~~ R3-7-913 shall maintain a copy of the decommissioning checklist required under ~~R20-2-913(I)~~ R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

R3-7-1010. Annual Testing and Inspection

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in ~~R20-2-1005(A)(1)~~ R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the Department may perform or may require registered service representatives to perform additional tests under ~~R20-2-1005(A)(4)~~ R3-7-1005(A)(4) during the annual inspection and testing. The Department shall provide registered service agencies with six months' notice before requiring additional annual testing under ~~R20-2-1005(A)(4)~~ R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

G. A person shall notify the Department when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Department approves the reinspection date and time.

H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Department issues to registered service agencies.

I. A person that cancels an annual inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

R3-7-1011. Compliance Inspections and Additional Test Methods

The Department shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in ~~R20-2-1010~~ R3-7-1010.

R3-7-1012. Enforcement

If the Department finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19 and this Chapter before the vapor recovery system or component is placed in service.

R3-7-1013. Stage II Vapor Recovery

If the Department identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the Department shall issue an administrative order and civil penalty under A.R.S. § ~~41-2115~~ 3-3475 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § ~~41-2115~~ 3-3475.

Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

Ullage (gallons)	Minimum Pressure after Five Minutes (Inches Water Column)
500	0.73
550	0.80
600	0.87
650	0.93
700	0.98
750	1.03
800	1.07
850	1.11
900	1.15
950	1.18
1000	1.21
1200	1.32
1400	1.40
1600	1.46
1800	1.51
2000	1.56
2400	1.62
2600	1.65
2800	1.67
3000	1.69
3500	1.73
4000	1.76
4500	1.79
5000	1.81
6000	1.84
7000	1.86
8000	1.88

Department of Weights and Measures

9000	1.89
10000	1.90
15000	1.93
20000	1.95
25000	1.96

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:41 PM
To: Roger Fisk
Subject: FW: Draft Weights and Measures Rules - Workshop July 8

From: Burkhead, Renae [mailto:rburkhead@srmaterials.com]
Sent: Thursday, July 14, 2016 5:04 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: RE: Draft Weights and Measures Rules - Workshop July 8

Michelle,

Follow up to the July 8th workshop on weights and measure rule changes.

Request one form be required for deputy application that we can list all scale BMF locations they would be working, instead of one application per location.

Will self-test materials be available on the department website for deputies that are not required to take written weighmaster exam?

If you will make changes to the existing weighmaster legend will you allow existing pre-printed inventory of tickets with the old weighmaster legend to be used until depleted?

If an automated ticketing system is not capable of requiring a pin/password to print electronic signatures on tickets are there other options to show the department a company is in compliance and would be allowed to use them?

Thank you,
Renae

Renae Burkhead
Order Management and Administrative Manager
Salt River Materials Group /
Phoenix Cement Company and
Salt River Sand & Rock
Tel: 480-850-5757
Cell: 480-695-3266
Fax: 480-850-5758
rburkhead@srmaterials.com | www.srmaterials.com

From: Michelle Wilson [mailto:mwilson@azda.gov]
Sent: Friday, June 10, 2016 11:54 AM
To: Michelle Wilson
Cc: Aaron Thompson; Damien DeSantiago; Jeff Grant; Mark Killian; Michele Mellott; Roger Fisk; Sara Kumaraswamy
Subject: Draft Weights and Measures Rules - Workshop July 8

All, the Weights and Measures Services Division will hold a workshop to review proposed changes that are included in the attached draft rule:

July 8, 9:00 a.m.
Department of Agriculture
1688 W. Adams St., Conference Room 206
Phoenix, AZ 85007

The stakeholder meeting will also be available by webinar/phone. Attached is the agenda and webinar information.

9:00 a.m. – Proposed Changes to Article 5, Weighmaster Program
Proposed Changes to Articles 1 through 4, 6, 9 and 10

1:00 p.m. – Proposed Changes to Article 7, Motor Fuels

Please let me know if you have any questions. Thank you,

Note: My email address has changed, please update it in your records and address book to mwilson@azda.gov.

Michelle Wilson
Environmental Program Manager
Arizona Department of Weights and Measures
1688 W. Adams Street, Phoenix, AZ 85007-2606
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

R3-7-715. Motor Fuel ~~Quality~~ Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, the producer of a motor fuel shall ~~test the motor fuel for its motor fuel properties using the methodologies in R20-2-702 R3-7-702 and ensure~~ certify that the motor fuel produced was tested under, and meets the requirements of, those applicable test methodologies and specifications ~~meets the applicable specifications in the material~~ incorporated by reference in ~~R20-2-702~~ R3-7-702.

B. Unless otherwise required in A.R.S. Title ~~41~~ 3, Chapter ~~15~~ 19, or this Chapter, ~~a person testing~~ #1 ~~or~~ and #2 diesel fuel shall ~~use the methodologies~~be tested under, and meet the requirements of, those applicable test methodologies and specifications incorporated by reference in R3-7-702. ~~and meet the specifications of requirements in ASTM D975.~~

C. The owner or operator of a transmix ~~or production~~processing facility shall ensure that the octane rating of all gasoline sold or offered for sale from the facility ~~outside the CBG covered area has its octane rating determined and certified~~is tested in accordance with 16 CFR 306, ~~using~~ and defined by the sum of the road octane number (RON), ~~the average of~~as determined by the ASTM D2699 test method and the motor octane number (MON), as determined by the ASTM D2700 test method, divided by 2. ~~, also known as the (R+M)/2 method~~.

D. The owner or operator of a motor fuel dispensing site shall ensure that the octane rating of all gasoline sold or offered for sale ~~outside the CBG covered area has its octane rating~~is posted in accordance with 16 CFR 306.

~~D~~E. A marketer or jobber who transfers gasoline shall ~~certify~~ ensure that the octane rating of all gasoline transferred is provided to the transferee in accordance with 16 CFR 306.

~~E~~F. Unless otherwise required in A.R.S. Title 3, Chapter 19, or this Chapter, the producer of ~~Premium~~ premium diesel shall ~~be certified to meet~~ certify that the premium diesel was tested under, and meets the requirements of, those methodologies and specifications incorporated by reference in R3-7-702 for diesel fuel and the~~all performance properties~~requirements outlined within~~under~~ Handbook 130, Uniform Engine Fuels and Automotive Lubricants Regulations, Section 2.2.1(a) through 2.2.1(d).

G. The owner or operator of a motor fuel dispensing site shall ensure that all premium diesel sold or offered for sale meets the requirements of this Chapter.

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Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:47 PM
To: Roger Fisk
Subject: FW: Section 715
Attachments: Section 715.docx

From: Mark Ellery [mailto:mark@caljet.com]
Sent: Tuesday, July 19, 2016 3:16 PM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Section 715

Michelle,

Thank you for the opportunity to submit rule change suggestions. I was able to share most of my thoughts during the workshop last week; however, I was looking at section 715 yesterday and came up with additional suggestions for that section, which I have attached to this communication.

The words "Certify" and "Ensure" are particularly important, I think. When I think of "certification", I think of a *producer* who is obligated to certify the quality of a given motor fuel. And, anyone down-stream, typically, unless they *alter a motor fuel in some way*, doesn't certify; rather, they "ensure" that the certification from a producer is carried through to the end user.

Regarding "*premium diesel*", ADWM, for years, was adamantly opposed to any such marketing. I vividly recall Dennis turning beat red in anger whenever premium diesel was discussed! He believed that *premium diesel* was a bunch of *hocus pocus, a marketing ploy*. Additionally, he was concerned that, from an enforcement standpoint, it would be cost prohibitive to test the samples. While I disagreed (and still disagree) with Dennis as far as there actually, or potentially, being a difference between ULSD and "certified premium diesel", there is no question that sampling and testing will be expensive, which is something that I would encourage you to investigate for yourself ($300-$400 bucks for a Cetane Number test, another $300-$400 for HFRR (lubricity) and who knows what a thermal stability and Operability test would cost) just to make sure that you are comfortable with it.

In any event, I am all for *premium diesel* as a marketable fuel, as long as there is "certification", somewhere, that the fuel sold or offered for sale does in fact meet the proposed requirements.

That said, I highly doubt that *premium diesel* will be supplied by a refinery, delivered and segregated in the pipeline and in terminal storage; rather, there is no doubt in my mind that it will be "produced" by means of an *additive package* at or by a terminal, distributor, or jobber. If I am correct, who will be willing to spend the money to "certify" that the finished diesel really is premium? One could make the argument that the additive supplier could "certify" that the package used "results in premium diesel"....any way you look at it, I think "certifying" premium diesel will be difficult.

Premium diesel is a tough one.....but, as provided in the attachment, my thought is that a "producer", whether a refiner, or someone who injects an additive into ULSD in order to "produce" premium diesel, should "certify" that the resultant diesel is in fact premium diesel by definition. And, a motor fuel dispensing site need only "ensure" that they are selling "certified premium diesel".

The only other option, with regards to premium diesel, would be to allow a "producer" of premium diesel to "ensure"

rather than "certify" that the fuel meets the applicable requirements of premium diesel....and perhaps the onus, in this case, could be placed on an additive supplier to "certify" that their "premium diesel package", added at the appropriate treat rate, will result in a conversion of ULSD into premium diesel. Food for thought.....

All the best,

Mark

Mark V. Ellery
Manager, Quality Assurance and Research

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5601 W. Van Buren Street
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Mobile: 602-663-3760
Email: mark@caljet.com

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R3-7-705

I. All ~~other~~ motor fuels shall meet the labeling requirements of 16 CFR 306. Additionally, the following requirements apply:

D. Biodiesel blends. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers biodiesel or biodiesel blends meets the following requirements:

1. The labeling requirements established under A.R.S. § 3-3433(K);
2. The diesel grade component as contained within ASTM D975 for grades other than No. 2 diesel shall be identified; ~~and~~
3. ~~Every motor fuel dispenser that dispenses biodiesel, B99 or B100, or a biodiesel blend containing diesel fuel with a biodiesel percentage greater than five percent shall be labeled with the following information on the upper 50 percent of the front panel of each motor fuel dispenser: "CHECK OWNER'S MANUAL" in a type at least 1/4 inch in height by 1/32 inch stroke and block-style letters of a color that contrasts with the background color.~~

E. Ethanol flex fuel. The owner or ~~f~~ operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers ethanol flex fuel with an ethanol concentration of no less than 51 and no more than 83 volume percent is labeled in accordance with 16 CFR 306.

F. Electricity sold as a motor vehicle fuel. Electricity sole as a motor vehicle fuel shall meet the requirements of Handbook 130, Uniform Regulation for the Method of Sale of Commodities, Section 2.34.

G. Premium diesel. Fuel labeled as "premium diesel" shall meet the specifications in R20-2-714(D).

H. Unattended retail motor fuel dispensers. In addition to all labeling and sign requirements in this Article, the owner or operator of a motor fuel dispensing site that is unstaffed shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

~~I. All other motor fuels shall meet the labeling requirements of 16 CFR 306.~~

J. All dispensers shall have decal that with the Division's name and phone number displayed in the upper 50 percent of the front panel of each dispenser. A template of the decal shall be placed on the Weights and Measures Services Division website for use by retailers. The seal placed by the Division under A.R.S. 3-3414(A)(13) satisfies this requirement.

J. All labels required under this section shall be clean, legible, and visible at all times.

R3-7-718

E. Exemptions.

1. A biofuel producer, biofuel supplier, or blender located outside of Arizona and supplying biofuel to a registered biofuel producer, biofuel supplier, or blender located within Arizona is not required to register under subsection (A)(1)(a);
2. Diesel fuel containing five percent or less biodiesel is exempt from this Section if the following conditions are met:
   a. The diesel fuel meets the standards of ASTM D975; and
   b. If the initial volume percent of biodiesel content is unknown, the person blending the biodiesel into diesel fuel analyzes the diesel fuel to verify the initial biodiesel content and ensure the resulting blend meets the requirements in ASTM D975.
3. A biofuel producer, biofuel supplier, or blender who produces, supplies, or blends diesel fuel blended with a biomass-based diesel where the resulting fuel meets the requirements in ASTM D975 is exempt from this section. According to FTC 16 CFR 306, Biomass-based diesel other than biodiesel (renewable

hydrocarbon diesel) has labeling requirements, which mirror the biodiesel labeling requirements, only the labels are orange and black instead of blue and black. By changing the text in section R3-7-705 to start with all motor fuels shall meet the labeling requirements of 16 CFR 306, Arizona would be mirroring both FTC and NIST Handbook 130.

4. Gasoline containing up to 10 percent ethanol is exempt from this section.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 4:42 PM
To: Roger Fisk
Subject: FW: Comments for Upcoming W&M Rulemaking
Attachments: Arizona ARTICLE 7 - Motor Fuels & Petroleum Products.docx

From: Rebecca Richardson [mailto:rrichardson@marciv.com]
Sent: Thursday, July 21, 2016 2:16 AM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Comments for Upcoming W&M Rulemaking

Michelle,
Attached are suggested changes for your consideration prior to publishing your proposed changes. My comments are limited to Section 7 Motor Fuels and Petroleum Products. There are two primary recommendations. Both align your state statute with Handbook 130 and FTC 16 CFR 306.

1) "Consult Owner's Manual" for biodiesel blends above B20 (instead of B5)
2) Establishing your state labeling requirement for biomass-based diesel other than biodiesel consistent with FTC (orange and black label). The simplest way to state it in your rules might be to begin the section by saying all fuels must meet 16 CFR 306 labeling requirements (see my edit). Then, you merely have to list what ISN'T already included. This also allows that whenever 16 CFR 306 is revised, your statute will always be consistent by merely requirement consistency with 16 CFR 306.

My reasoning for including labeling for biomass-based diesel other than biodiesel is that the the Truck and Engine Manufacturers Association still does not have an official position on the use of this product - even when it meets D975 - in some of their member companies' engines. Here is an excerpt from the EMA Fact Page on Biomass-based Diesel:

Renewable Hydrocarbon Diesel:
Given renewable hydrocarbon diesel's petroleum-like properties, certain engine manufacturers approve renewable hydrocarbon diesel fuel and renewable hydrocarbon diesel fuel blends as long as the finished fuel meets ASTM D975, EN590, or CEN/TS 15940. Some are concerned, however, that neat renewable hydrocarbon fuel or fuel blends having a high percentage of renewable hydrocarbon fuel may cause engine malfunction. Engine manufacturers continue to evaluate renewable hydrocarbon diesel fuel to determine potential concerns and consider additional standard recommendations.

I believe Matt Curran sent a note out that you would not be in Denver. I was hoping to visit with you there, but if not, we can always discuss via phone.

Thanks very much for your invitation to participate in this preliminary process. I hope it will make for a smooth rulemaking process and implemention.

Let me know if you have questions Michelle.

Best,
Rebecca

Rebecca Richardson
Ph. 217-419-3543
M4 Consulting
Discovering the Power of Nature

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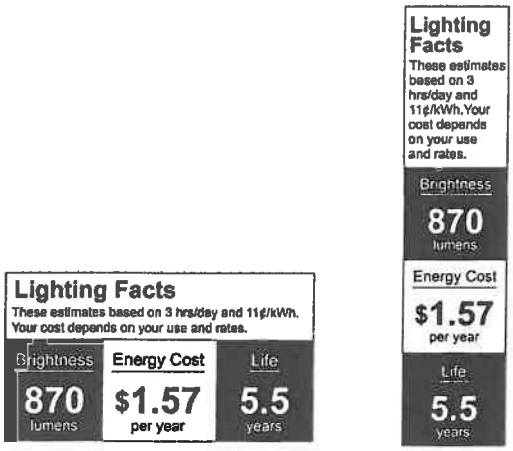
U.S. GOVERNMENT
INFORMATION
GPO



Sample Label 13C

Lighting Facts Label Alternative for Specialty Consumer Lamps

Sample Label 13D

Icon for Specialty Consumer Lamp Packages that Meet the Requirements of section 305.15(c)(2)(iv)

* * * * *

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

GENERAL

Sec.
306.0 Definitions.
306.1 What this rule does.
306.2 Who is covered.
306.3 Stayed or invalid parts.
306.4 Preemption.

DUTIES OF REFINERS, IMPORTERS, AND PRODUCERS

306.5 Automotive fuel rating.
306.6 Certification.
306.7 Recordkeeping.

DUTIES OF DISTRIBUTORS

306.8 Certification.
306.9 Recordkeeping.

DUTIES OF RETAILERS

306.10 Automotive fuel rating posting.
306.11 Recordkeeping.

LABEL SPECIFICATIONS

306.12 Labels.

APPENDIX A TO PART 306—SUMMARY OF LABELING REQUIREMENTS FOR BIODIESEL FUELS

AUTHORITY: 15 U.S.C. 2801 *et seq.*; 42 U.S.C. 17021.

SOURCE: 44 FR 19169, Mar. 30, 1979, unless otherwise noted.

GENERAL

§ 306.0 Definitions.

As used in this part:

(a) *Octane rating* means the rating of the anti-knock characteristics of a grade or type of gasoline as determined by dividing by 2 the sum of the research octane number plus the motor octane number.

(b) *Research octane number* and *motor octane number*. (1) These terms have the meanings given such terms in the specifications of ASTM International ("ASTM") entitled "Standard Specification for Automotive Spark-Ignition Engine Fuel (published November 2010)" designated D4814–10b and, with respect to any grade or type of gasoline, are determined in accordance with test methods set forth in either:

(i) ASTM D2699–09, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel (published November 2009)" and ASTM D2700–09, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel (published November 2009)"; or

(ii) ASTM D2885–10, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique (published March 2010)."

(2) The incorporations by reference of ASTM D4814–10b, ASTM D2699–09, ASTM D2700–09, and ASTM D2885–10 in paragraph (b)(1) of this Section, and in § 306.5(a), were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D4814–10b, ASTM D2699–09, ASTM D2700–09, and ASTM D2885–10, may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration ("NARA"). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *Refiner* means any person engaged in the production or importation of automotive fuel.

(d) *Producer* means any person who purchases component elements and combines them to produce and market automotive fuel.

(e) *Distributor* means any person who receives automotive fuel and distributes such automotive fuel to another person other than the ultimate purchaser.

(f) *Retailer* means any person who markets automotive fuel to the general public for ultimate consumption.

(g) *Ultimate purchaser* means, with respect to any item, the first person who purchases such item for purposes other than resale.

(h) *Person*, for purposes of applying any provision of the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.*, with respect to any provision of this part, includes a partnership and a corporation.

(i) *Automotive fuel* means liquid fuel of a type distributed for use as a fuel in any motor vehicle, and the term includes, but is not limited to:

(1) Gasoline, an automotive spark-ignition engine fuel, which includes, but is not limited to, gasohol (generally a mixture of approximately 90% unleaded gasoline and 10% denatured ethanol) and fuels developed to comply with the Clean Air Act, 42 U.S.C. 7401 *et seq.*, such as reformulated gasoline and oxygenated gasoline; and

(2) Alternative liquid automotive fuels, including, but not limited to:

(i) Methanol, denatured ethanol, and other alcohols;

(ii) Mixtures containing 85 percent or more by volume of methanol, denatured ethanol, and/or other alcohols (or such other percentage, but not less than 70 percent, as determined by the Secretary of the United States Department of Energy, by rule, to provide for requirements relating to cold start, safety, or vehicle functions), with gasoline or other fuels;

(iii) Liquefied natural gas;

(iv) Liquefied petroleum gas;

(v) Coal-derived liquid fuels;

(vi) Biodiesel;

(vii) Biomass-based diesel;

(viii) Biodiesel blends containing more than 5 percent biodiesel by volume; and

(ix) Biomass-based diesel blends containing more than 5 percent biomass-based diesel by volume.

(3) Biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet American Society for Testing and Materials ("ASTM") standard D975-07b ("Standard Specification for Diesel Fuel Oils"), are not automotive fuels covered by the requirements of this part. The incorporation of ASTM D975-07b by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D975-07b may be obtained from ASTM International, 1916 Race Street, Philadelphia, PA, 19103, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: (*http://www.archives.gov/federal_register/cfr/ibr_locations.html.*)

NOTE TO PARAGRAPH (i): Provided, however, that biodiesel blends and biomass-based diesel blends that contain less than or equal to 5 percent biodiesel by volume and less than or equal to 5 percent biomass-based diesel by volume, and that meet ASTM standard D975–09b "Standard Specification for Diesel Fuel Oils (published August 2009)," are not automotive fuels covered by the requirements of this Part. The incorporation of ASTM D975–09b by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D975–09b may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(j) *Automotive fuel rating* means—(1) For gasoline, the octane rating.

(2) For an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, or biomass-based diesel blends, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired.

(3) For biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5 percent biomass-based diesel, and biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume.

(k) *Biomass-based diesel* means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545, and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater, except that the term does not include biodiesel as defined in this part.

(l) *Biodiesel* means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet: The registration requirements for fuels and fuel additives under 40 CFR part 79; and the requirements of ASTM standard D6751–10 "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels (published October 2010)." The incorporation of ASTM D6751–10 by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ASTM D6751B10 may be obtained from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428, or may be inspected at the Federal Trade Commission, Public Reference Room, Room 130, 600 Pennsylvania Avenue, NW., Washington, DC, or at NARA. For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/cfr/ibr_locations.html.*

(m) *Biodiesel blend* means a blend of petroleum-based diesel fuel with biodiesel.

(n) *Biomass-based diesel blend* means a blend of petroleum-based diesel fuel with biomass-based diesel.

[58 FR 41372, Aug. 3, 1993, as amended at 69 FR 18803, Apr. 9, 2004; 73 FR 40162, July 11, 2008; 76 FR 19690, Apr. 8, 2011]

§ 306.1 What this rule does.

This rule deals with the certification and posting of automotive fuel ratings in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, 15 U.S.C. 41 *et seq.* It applies to persons, partnerships, and corporations. If you are covered by this regulation, breaking any of its rules is an unfair or deceptive act or practice under section 5 of that Act. You can be fined up to $10,000 (plus an adjustment for inflation, under § 1.98 of this chapter) each time you break a rule.

[58 FR 41373, Aug. 3, 1993, as amended at 61 FR 54549, Oct. 21, 1996; 61 FR 55840, Oct. 29, 1996]

§ 306.2 Who is covered.

You are covered by this rule if you are a refiner, importer, producer, distributor, or retailer of automotive fuel.

[58 FR 41373, Aug. 3, 1993]

§ 306.3 Stayed or invalid parts.

If any part of this rule is stayed or held invalid, the rest of it will stay in force.

[44 FR 19169, Mar. 30, 1979. Redesignated at 58 FR 41372, Aug. 3, 1993]

§ 306.4 Preemption.

The Petroleum Marketing Practices Act ("PMPA"), 15 U.S.C. 2801 *et seq.*, as amended, is the law that directs the FTC to enact this rule. Section 204 of PMPA, 15 U.S.C. 2824, provides:

(a) To the extent that any provision of this title applies to any act or omission, no State or any political subdivision thereof may adopt or continue in effect, except as provided in subsection (b), any provision of law or regulation with respect to such act or omission, unless such provision of such law or regulation is the same as the applicable provision of this title.

(b) A State or political subdivision thereof may provide for any investigative or enforcement action, remedy, or penalty (including procedural actions necessary to carry out such investigative or enforcement actions, remedies, or penalties) with respect to any provision of law or regulation permitted by subsection (a).

[58 FR 41373, Aug. 3, 1993]

DUTIES OF REFINERS, IMPORTERS AND PRODUCERS

§ 306.5 Automotive fuel rating.

If you are a refiner, importer, or producer, you must determine the automotive fuel rating of all automotive fuel before you transfer it. You can do that yourself or through a testing lab.

(a) To determine the automotive fuel rating of gasoline, add the research octane number and the motor octane number and divide by two, as explained by ASTM D4814–10b, "Standard Specifications for Automotive Spark-Ignition Engine Fuel," (incorporated by reference, see § 306.0(b)(2)). To determine the research octane and motor octane numbers you may either:

(1) Use ASTM standard test method ASTM D2699–09, "Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel" (incorporated by reference, see § 306.0(b)(2)), to determine the research octane number, and ASTM standard test method ASTM D2700–09, "Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel" (incorporated by reference, see § 306.0(b)(2)), to determine the motor octane number; or

(2) Use the test method set forth in ASTM D2885–10, "Standard Test Method for Determination of Octane Number of Spark-Ignition Engine Fuels by On-Line Direct Comparison Technique" (incorporated by reference, see § 306.0(b)(2)).

(b) To determine automotive fuel ratings for alternative liquid automotive fuels other than biodiesel blends and biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage by volume of the principal component of the alternative liquid automotive fuel that you must disclose. In the case of biodiesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biodiesel contained in the fuel, and in the

case of biomass-based diesel blends, you must possess a reasonable basis, consisting of competent and reliable evidence, for the percentage of biomass-based diesel contained in the fuel. You also must have a reasonable basis, consisting of competent and reliable evidence, for the minimum percentages by volume of other components that you choose to disclose.

[58 FR 41373, Aug. 3, 1993, as amended at 73 FR 40162, July 11, 2008; 76 FR 19690, Apr. 8, 2011]

§ 306.6 Certification.

In each transfer you make to anyone who is not a consumer, you must certify the automotive fuel rating of the automotive fuel consistent with your determination. You can do this in either of two ways:

(a) Include a delivery ticket or other paper with each transfer of automotive fuel. It may be an invoice, bill of lading, bill of sale, terminal ticket, delivery ticket, or any other written proof of transfer. It must contain at least these four items:

(1) Your name;

(2) The name of the person to whom the automotive fuel is transferred;

(3) The date of the transfer;

(4) The automotive fuel rating. Octane rating numbers may be rounded off to a whole or half number equal to or less than the number determined by you.

(b) Give the person a letter or other written statement. This letter must include the date, your name, the other person's name, and the automotive fuel rating of any automotive fuel you will transfer to that person from the date of the letter onwards. Octane rating numbers may be rounded to a whole or half number equal to or less than the number determined by you. This letter of certification will be good until you transfer automotive fuel with a lower automotive fuel rating, except that a letter certifying the fuel rating of biomass-based diesel, biodiesel, a biomass-based diesel blend, or a biodiesel blend will be good only until you transfer those fuels with a different automotive fuel rating, whether the rating is higher or lower. When this happens, you must certify the automotive fuel rating of the new automotive fuel either with a delivery ticket or by sending a new letter of certification.

(c) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper.

[58 FR 41373, Aug. 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994; 73 FR 40163, July 11, 2008; 76 FR 19691, Apr. 8, 2011]

§ 306.7 Recordkeeping.

You must keep records of how you determined automotive fuel ratings for one year. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by people authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]

DUTIES OF DISTRIBUTORS

§ 306.8 Certification.

If you are a distributor, you must certify the automotive fuel rating of the automotive fuel in each transfer you make to anyone who is not a consumer.

(a) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must certify the gasoline's octane rating consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must certify consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to certify the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating may be rounded to a whole or half number equal to or less than the number certified to you or determined by you.

(b) If you do not blend alternative liquid automotive fuels, you must certify consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable

basis, consisting of competent and reliable evidence, for the automotive fuel rating that you certify for the blend.

(c) You may certify either by using a delivery ticket with each transfer of automotive fuel, as outlined in § 306.6(a), or by using a letter of certification, as outlined in § 306.6(b).

(d) When you transfer automotive fuel to a common carrier, you must certify the automotive fuel rating of the automotive fuel to the common carrier, either by letter or on the delivery ticket or other paper. When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

[58 FR 41374, Aug. 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994]

§ 306.9 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your automotive fuel rating certifications. You must also keep for one year records of any automotive fuel rating determinations you made according to § 306.5. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members, or by persons authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]

DUTIES OF RETAILERS

§ 306.10 Automotive fuel rating posting.

(a) If you are a retailer, you must post the automotive fuel rating of all automotive fuel you sell to consumers. You must do this by putting at least one label on each face of each dispenser through which you sell automotive fuel. If you are selling two or more kinds of automotive fuel with different automotive fuel ratings from a single dispenser, you must put separate labels for each kind of automotive fuel on each face of the dispenser.

(b)(1) The label, or labels, must be placed conspicuously on the dispenser so as to be in full view of consumers and as near as reasonably practical to the price per unit of the automotive fuel.

(2) You may petition for an exemption from the placement requirements by writing the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the reasons that you want the exemption.

(c) In the case of gasoline, if you do not blend the gasoline with other gasoline, you must post the octane rating of the gasoline consistent with the octane rating certified to you. If you blend the gasoline with other gasoline, you must post consistent with your determination of the average, weighted by volume, of the octane ratings certified to you for each gasoline in the blend, or consistent with the lowest octane rating certified to you for any gasoline in the blend. Whether you blend gasoline or not, you may choose to post the octane rating of the gasoline consistent with your determination of the octane rating according to the method in § 306.5. In cases involving gasoline, the octane rating must be shown as a whole or half number equal to or less than the number certified to you or determined by you.

(d) If you do not blend alternative liquid automotive fuels, you must post consistent with the automotive fuel rating certified to you. If you blend alternative liquid automotive fuels, you must possess a reasonable basis, consisting of competent and reliable evidence, for the automotive fuel rating that you post for the blend.

(e)(1) You must maintain and replace labels as needed to make sure consumers can easily see and read them.

(2) If the labels you have are destroyed or are unusable or unreadable for some unexpected reason, you can satisfy the law by posting a temporary label as much like the required label as possible. You must still get and post the required label without delay.

(f) The following examples of automotive fuel rating disclosures for some presently available alternative liquid automotive fuels are meant to serve as illustrations of compliance with this part, but do not limit the Rule's coverage to only the mentioned fuels:

(1) "Methanol/Minimum _____% Methanol"

(2) "Ethanol/Minimum _____% Ethanol"

(3) "M—85/Minimum _____% Methanol"

(4) "E—85/Minimum _____% Ethanol"

(5) "LPG/Minimum _____% Propane" or

"LPG/Minimum _____% Propane and _____% Butane"

(6) "LNG/Minimum _____% Methane"

(7) "B–20 Biodiesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"

(8) "20% Biomass-Based Diesel Blend/contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent"

(9) "B–100 Biodiesel/contains 100 percent biodiesel"

(10) "100% Biomass-Based Diesel/contains 100 percent biomass-based diesel"

(g) When you receive automotive fuel from a common carrier, you also must receive from the common carrier a certification of the automotive fuel rating of the automotive fuel, either by letter or on the delivery ticket or other paper.

[58 FR 41374, Aug. 3, 1993, as amended at 59 FR 48798, Sept. 23, 1994; 73 FR 40163, July 11, 2008]

§306.11 Recordkeeping.

You must keep for one year any delivery tickets or letters of certification on which you based your posting of automotive fuel ratings. You also must keep for one year records of any automotive fuel rating determinations you made according to §306.5. These records may be kept at the retail outlet or at another, reasonably close location. They must be available for inspection by Federal Trade Commission and Environmental Protection Agency staff members or by persons authorized by FTC or EPA.

[58 FR 41374, Aug. 3, 1993]

LABEL SPECIFICATIONS

§306.12 Labels.

All labels must meet the following specifications:

(a) *Layout*—(1) *For gasoline labels.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. The illustrations appearing at the end of this rule are prototype labels that demonstrate the proper layout. "Helvetica Black" or equivalent type is used throughout except for the octane rating number on octane labels, which is in Franklin gothic type. All type is centered. Spacing of the label is ¼ inch (.64 cm) between the top border and the first line of text, ⅛ inch (.32 cm) between the first and second line of text, ¼ inch (.64 cm) between the octane rating and the line of text above it. All text and numerals are centered within the interior borders.

(2) *For alternative liquid automotive fuel labels (one principal component), other than biodiesel, biomass-based diesel, biodiesel blends, or biomass-based diesel blends.* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel. This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is ¼ inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is ⅛ inch (.32 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is 3/16 inch (.48 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this one principal component label to accommodate a fuel descriptor that is longer than shown in the sample labels, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(3) *For alternative liquid automotive fuel labels (two components).* The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains the name of the fuel.

This band should measure 1 inch (2.54 cm) deep. Spacing of the fuel name is ¼ inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. The first line of type beneath the black band is 3/16 inch (.48 cm) from the bottom of the black band. All type below the black band is centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label. If you wish to change the dimensions of this two component label to accommodate additional fuel components, you must petition the Federal Trade Commission. You can do this by writing to the Secretary of the Federal Trade Commission, Washington, DC 20580. You must state the size and contents of the label that you wish to use, and the reasons that you want to use it.

(4) *For biodiesel blends containing more than 5 percent and no greater than 20 percent biodiesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The capital letter "B" followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (e.g., "B20") and then by the term "Biodiesel Blend"; or

(B) The term "Biodiesel Blend."

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is ½ inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent." The script underneath the black band must be centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(5) *For biomass-based diesel blends containing more than 5 percent and no greater than 20 percent biomass-based diesel by volume.* (i) The label is 3 inches (7.62 cm) wide × 2½ inches (6.35 cm) long. "Helvetica Black" or equivalent type is used throughout. All type is centered. The band at the top of the label contains either:

(A) The numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (*e.g.*, "20%") and then by the term "Biomass-Based Diesel Blend"; or

(B) The term "Biomass-Based Diesel Blend."

(ii) The band should measure 1 inch (2.54 cm) deep. Spacing of the text in the band is ¼ inch (.64 cm) from the top of the label and 3/16 inch (.48 cm) from the bottom of the black band, centered horizontally within the black band. Directly underneath the black band, the label shall read "contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent." The script underneath the black band must be centered horizontally, with ⅛ inch (.32 cm) between each line. The bottom line of type is ¼ inch (.64 cm) from the bottom of the label. All type should fall no closer than 3/16 inch (.48 cm) from the side edges of the label.

(6) *For biodiesel blends containing more than 20 percent biodiesel by volume.* The requirements are the same as in paragraph (a)(4) of this section, except that the black band at the top of the label shall contain the capital letter "B" followed immediately by the numerical value representing the volume percentage of biodiesel in the fuel (e.g., "B-70") and then the term "Biodiesel Blend." In addition, the words directly underneath the black band shall read "contains more than 20 percent biomass-based diesel or biodiesel."

(7) *For biomass-based diesel blends containing more than 20 percent biomass-based diesel by volume.* The requirements are the same as in paragraph (a)(5) of this section, except that the black band at the top of the label shall contain the numerical value representing the volume percentage of biomass-based diesel in the fuel followed immediately by the percentage symbol (e.g., "70%") and then the term

"Biomass-Based Diesel Blend." In addition, the words directly underneath the black band shall read "contains more than 20 percent biomass-based diesel or biodiesel."

(8) *For 100% biodiesel.* The requirements are the same as in paragraph (a)(4) of this section, except that the black band at the top of the label shall contain the phrase "B-100 Biodiesel." In addition, the words directly underneath the black band shall read "contains 100 percent biodiesel."

(9) *For 100% biomass-based diesel.* The requirements are the same as in paragraph (a)(5) of this section, except that the black band at the top of the label shall contain the phrase "100% Biomass-Based Diesel." In addition, the words directly underneath the black band shall read "contains 100 percent biomass-based diesel."

(b) *Type size and setting*—(1) *For gasoline labels.* The Helvetica series or equivalent type is used for all numbers and letters with the exception of the octane rating number. Helvetica is available in a variety of phototype setting systems, by linotype, and in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The line "Minimum Octane Rating" is set in 12 point Helvetica Bold, all capitals, with letterspace set at 12½ points. The line "(R + M)/2 METHOD" is set in 10 point Helvetica Bold, all capitals, with letterspace set at 10½ points. The octane number is set in 96 point Franklin gothic condensed with ⅛ inch (.32 cm) space between the numbers.

(2) *For alternative liquid automotive fuel labels (one principal component).* Except as provided above, labels should conform to the following specifications. All type should be set in upper case (all caps) "Helvetica Black" or equivalent type throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½ inch (1.27 cm) cap height) "Helvetica Black," knocked out of a 1 inch (2.54 cm) deep band. The type for the words "MINIMUM" and the principal component is 24 point (¼ inch (.64 cm) cap height). The type for percentage is 36 point (⅜ inch (.96 cm) cap height).

(3) *For alternative liquid automotive fuel labels (two components).* All type should be set in upper case (all caps) "Helvetica Black" or equivalent type throughout. Helvetica Black is available in a variety of computer desk-top and phototype setting systems. Its name may vary, but the type must conform in style and thickness to the sample provided here. The spacing between letters and words should be set as "normal." The type for the fuel name is 50 point (½ inch (1.27 cm) cap height) "Helvetica Black," knocked out of a 1 inch (2.54 cm) deep band. All other type is 24 point (¼ inch (.64 cm) cap height).

(c) *Colors*—(1) *For gasoline labels.* The basic color on all octane labels is process yellow. All type is process black. All borders are process black. All colors must be non-fade.

(2) *For alternative liquid automotive fuel labels other than biodiesel and biodiesel blends.* The background color on all the labels is Orange: PMS 1495 or its equivalent. The knock-out type within the black band is Orange: PMS 1495 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

(3) *For biodiesel and biodiesel blends.* The background color on all the labels is Blue: PMS 277 or its equivalent. The knock-out type within the black band is Blue: PMS 277 or its equivalent. All other type is process black. All borders are process black. All colors must be non-fade.

(d) *Contents.* Examples of the contents are shown in the sample labels. The proper octane rating for each gasoline must be shown. The proper automotive fuel rating for each alternative liquid automotive fuel must be shown. No marks or information other than that called for by this rule may appear on the labels.

(e) *Special label protection.* All labels must be capable of withstanding extremes of weather conditions for a period of at least one year. They must be resistant to automotive fuel, oil, grease, solvents, detergents, and water.

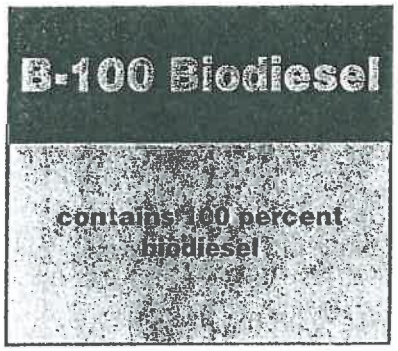
(f) *Illustrations of labels.* Labels should meet the specifications in this section, and should look like these examples, except the black print should be on the appropriately colored background.

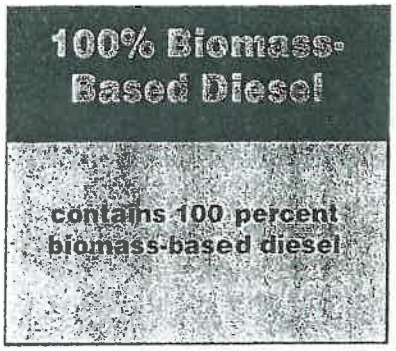
M-85
MINIMUM
85%
METHANOL

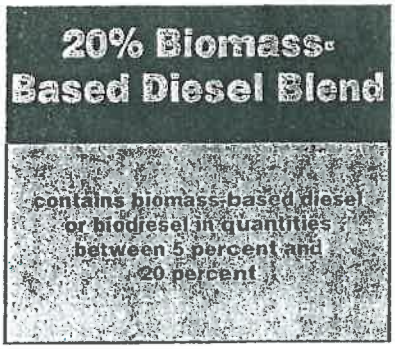
LPG
MINIMUM
90% PROPANE
2% BUTANE

LPG
MINIMUM
90%
PROPANE

E-100
MINIMUM
95%
ETHANOL







[58 FR 41375, Aug. 3, 1993, as amended at 73 FR 40163, July 11, 2008; 76 FR 19691, Apr. 8, 2011]

Appendix A to Part 306—Summary of Labeling Requirements for Biodiesel Fuels

(Part 1 of 2)

Fuel type	Blends of 5 percent or less	Blends of more than 5 but not more than 20 percent		
		Header	Text	Color
Biodiesel	No label required	Either "B-XX Biodiesel Blend" or "Biodiesel Blend"	contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent	Blue

(Part 1 of 2)

Fuel type	Blends of 5 percent or less	Blends of more than 5 but not more than 20 percent		
		Header	Text	Color
Biomass-Based Diesel	No label required	Either "XX% Biomass-Based Diesel Blend" or "Biomass-Based Diesel Blend"	contains biomass-based diesel or biodiesel in quantities between 5 percent and 20 percent	Orange

(Part 2 of 2)

Fuel type	Blends of more than 20 percent			Pure (100%) Biodiesel or Biomass-Based diesel		
	Header	Text	Color	Header	Text	Color
Biodiesel	B-XX Biodiesel Blend	contains more than 20 percent biomass-based diesel or biodiesel	Blue	B-100 Biodiesel	contains 100 percent biodiesel	Blue
Biomass-Based Diesel	XX% Biomass-Based Diesel Blend	contains more than 20 percent biomass-based diesel or biodiesel	Orange	100% Biomass-Based Diesel	contains 100 percent biomass-based diesel	Orange

[73 FR 40164, July 11, 2008]

PART 307 [RESERVED]

PART 308—TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Sec.

308.1 Scope of regulations in this part.
308.2 Definitions.
308.3 Advertising of pay-per-call services.
308.4 Special rule for infrequent publications.
308.5 Pay-per-call service standards.
308.6 Access to information.
308.7 Billing and collection for pay-per-call services.
308.8 Severability.
308.9 Rulemaking review.

AUTHORITY: Pub. L. 102-556, 106 Stat. 4181 (15 U.S.C. 5701, *et seq.*)

SOURCE: 58 FR 42400, Aug. 9, 1993, unless otherwise noted.

§ 308.1 Scope of regulations in this part.

This rule implements titles II and III of the Telephone Disclosure and Dispute Resolution Act of 1992, to be codified in relevant part at 15 U.S.C. 5711–14, 5721–24.

§ 308.2 Definitions.

(a) *Bona fide educational service* means any pay-per-call service dedicated to providing information or instruction relating to education, subjects of academic study, or other related areas of school study.

(b) *Commission* means the Federal Trade Commission.

(c) *Pay-per-call service* has the meaning provided in section 228 of the Communications Act of 1934, 47 U.S.C. 228.[1]

(d) *Person* means any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(e)(1) *Presubscription or comparable arrangement* means a contractual agreement in which

(i) The service provider clearly and conspicuously discloses to the consumer all material terms and conditions associated with the use of the

[1] Section 228 of the Communications Act of 1934 states:

(1) The term *pay-per-call services* means any service—

(A) In which any person provides or purports to provide—

(i) Audio information or audio entertainment produced or packaged by such person;

(ii) Access to simultaneous voice conversation services; or

(iii) Any service, including the provision of a product, the charges for which are assessed on the basis of the completion of the call;

(B) For which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call; and

(C) Which is accessed through use of a 900 telephone number or other prefix or area code designated by the (Federal Communications) Commission in accordance with subsection (b)(5) (47 U.S.C. 228(b)(5)).

(2) Such term does not include directory services provided by a common carrier or its affiliate or by a local exchange carrier or its affiliate, or any service the charge for which is tariffed, or any service for which users are assessed charges only after entering into a presubcription or comparable arrangement with the provider of such service.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 4:06 PM
To: Roger Fisk
Subject: FW: Followup to CBG Workshop

From: Heller, Miles T [mailto:Miles.T.Heller@tsocorp.com]
Sent: Tuesday, August 18, 2015 10:21 AM
To: Michelle Wilson <mwilson@azdwm.gov>
Cc: Gina Grey (ggrey@wspa.org) <ggrey@wspa.org>; Regal, Derek <Derek.B.Regal@tsocorp.com>
Subject: RE: Followup to CBG Workshop

Michelle – thanks for looking into this. It sounds like too heavy a lift for this round. However – I think we should keep it in a parking lot somewhere. It has been a while back so I do not remember the details – but Las Vegas used to have specific fuel specifications related to what I thought was a CO requirement, and they were able to change with EPA's approval. The key is that the fleet of vehicles now control CO so well that the oxygenate is really not needed.

Miles Heller, Tesoro
Director, CA Fuels & Regulatory Affairs
Cell - (916) 860-9378

From: Michelle Wilson [mailto:mwilson@azdwm.gov]
Sent: Monday, August 17, 2015 4:21 PM
To: Michelle Wilson
Cc: Andy Tobin; Damien DeSantiago; Michele Mellott; Roger Fisk
Subject: Followup to CBG Workshop

All, during the Cleaner Burning Gasoline (CBG) workshop a question was asked regarding the removal of the wintertime 10% ethanol requirements from the statute. Also, there was request for information regarding the status of the non-attainment area with respect to the various pollutants. Below is a summary:

- MAG has confirmed as discussed during the meeting that the 10% ethanol requirement in the wintertime cannot be removed from statute. This is part of the State Implementation Plan (SIP). Although the area has been designated as a maintenance area for carbon monoxide (CO), the Clean Air Act section 110(l) states that EPA cannot approve a SIP revision that would interfere with attainment or maintenance. If this were removed, it would require a SIP revision and without that listed as an enforceable measure, it would interfere with maintenance of the CO standard.
- Although not discussed during the meeting, I confirmed with MAG that the both the Type 1 (federal RFG) and Type 2 (CARB Phase 2) specifications in the CBG program are included in the SIP and continue to be used as control measures with benefits that are in addition to the newer federal gasoline specifications. MAG indicated that they continue to be utilized and do provide air quality benefits above the federal requirements.
- As requested, this link on MAG's website has an update related to the attainment status of the air quality pollutants:
  http://www.azmag.gov/Fast_Facts/FFacts_AirQuality.asp

I believe this information answers the questions that were raised without the need for a separate meeting on this topic. If you have any questions or feel further discussion is needed, please let me know.

Thank you,

Michelle Wilson
Director, Transportation Fuels and Air Quality Programs
Arizona Department of Weights and Measures
4425 W. Olive Ave., Ste. 134, Glendale, AZ 85302-3844
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 4:03 PM
To: Roger Fisk
Subject: FW: Comments on proposed rules and legislation

From: Nicole Smith [mailto:nsmith@caljet.com]
Sent: Thursday, August 20, 2015 2:10 PM
To: Michelle Wilson <mwilson@azdwm.gov>
Subject: Comments on proposed rules and legislation

Michelle,

Here are our comments regarding the proposed rules and legislation.

1) R20-2-707 A.11 and R20-2-757 A.9. I suggest changing the final destination requirement in these two sections to match the proposed legislative change to 41-2083 S, and removing subsections 'B' in each section, as they would no longer be applicable with the proposed legislative change.

2) 41-2083. I suggest combining subsections R & S into one subsection. Or if they need to be kept separate, why are diesel and distillates singled out, rather than having the subsection apply to all fuels?

3) R20-2-718 A.2.a.iv. My question is regarding the use of the word 'signed' in this subsection. I don't recall anywhere to sign when submitting data electronically. Does this refer to a separate method of data submission, where a signature is required? If so, perhaps there should be a clarification on who needs to sign depending on how the data reporting is submitted. Or, if electronic submission is the exclusive method of data reporting, should the subsection be altered to accommodate this?

4) 1-215. Definitions. Regarding the addition of "Ethanol Flex Fuel" to the "clean burning fuel" definition, with its reduced ethanol content (53-54%), is "ethanol flex fuel" really a "clean burning fuel"?

5) 41-2051. Definitions. We feel the addition of "Biomass-based diesel" and "Biomass-based diesel blend" definitions has the unintended consequence of making the statute unnecessarily confusing and messy. We suggest holding off on adding this definition until a later date, as necessary.

In addition to these comments, I'd like to take this opportunity to bring up a couple points regarding the rules, but not specifically related to biodiesel or CBG.

1) Is there any way to phase out the use of the term 'unleaded' ('UNL', 'UN') when referring to 'regular' gasoline? With the exception of aviation gasoline, all gasoline is unleaded, and I feel that using the term unleaded specifically for regular gasoline can be confusing, in addition to being unnecessary.

2) As someone who is relatively new to the rules, I have found the organization of the sections a bit confusing. I understand the CBG portion was inserted at the end of Article 7 in order to keep it separate from the other gasoline-related sections, but I've noticed that not all of the CBG-specific sections explicitly name CBG in their title, which could lead a reader to believe the section covers more than just CBG. And there are two sections (707 & 714) that state "other than Arizona CBG" in their title, which I feel may lead someone interested in CBG regulations to skip entirely. So, I was wondering if it would be possible (and helpful) to rename some of the section titles to be more clear about which fuel each covers.

And finally, as you had requested, here is a brief analysis of how the proposed rule will impact our business:

> Given the proposed rule language relating to biofuels sampling and testing (E85 and B20), we expect to reduce our average monthly *cost of independent analytical testing* (Inspectorate) by 20%, which, over the course of a year, would prove to be very significant to our bottom line. We also anticipate saving an average of 4.5 hours a month by *reducing our time spent submitting reports.*

Thanks,

Nicole Smith
Laboratory Supervisor
the jet companies
125 N. 53rd Avenue
Phoenix, Arizona 85043

O: 602-272-5522, ext. 122
C: 602-501-7058

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 4:05 PM
To: Roger Fisk
Subject: FW: Followup to CBG Workshop

From: Mark Ellery [mailto:mark@caljet.com]
Sent: Wednesday, August 19, 2015 12:19 PM
To: Michelle Wilson <mwilson@azdwm.gov>
Cc: Andy Tobin <atobin@azdwm.gov>; Damien DeSantiago <dsantiago@azdwm.gov>; Michele Mellott <mmellott@azdwm.gov>; Roger Fisk <rfisk@azdwm.gov>
Subject: RE: Followup to CBG Workshop

Michelle,

As a historical note, there was an attempt, several years ago, to eliminate *two months of ethanol blending* during the Winter season (February and March). That effort was led by Chevron, and WSPA, who claimed that it would provide "flexibility" to industry. At the time, I and one other party, represented the primary *opposition* to that effort. To make a long story short, using the proponents own data, we determined that the elimination of those two months of ethanol blending would result in a slight increase in particulate (PM 10) emissions; EPA agreed, and rejected the effort, flat out.

Best regards,

Mark

From: Michelle Wilson [mailto:mwilson@azdwm.gov]
Sent: Wednesday, August 19, 2015 11:59 AM
To: Michelle Wilson <mwilson@azdwm.gov>
Cc: Andy Tobin <atobin@azdwm.gov>; Damien DeSantiago <dsantiago@azdwm.gov>; Michele Mellott <mmellott@azdwm.gov>; Roger Fisk <rfisk@azdwm.gov>
Subject: RE: Followup to CBG Workshop

I need to clarify my first bullet point below to make a correction pointed out by MAG. In order to determine If removing the 10% ethanol requirement in the winter months would interfere with attainment or maintenance, a modeling analysis would need to be conducted. In a maintenance plan, you have the option to make a demonstration that the removal of a control measure will not interfere with attainment or maintenance. This would be subject to EPA approval.

I apologize if this caused any confusion. Please remember comments regarding the rules/statutes are due tomorrow.

Thanks everyone,

Michelle

From: Michelle Wilson
Sent: Monday, August 17, 2015 4:21 PM
To: Michelle Wilson

Cc: Andy Tobin; Damien DeSantiago; Michele Mellott; Roger Fisk
Subject: Followup to CBG Workshop

All, during the Cleaner Burning Gasoline (CBG) workshop a question was asked regarding the removal of the wintertime 10% ethanol requirements from the statute. Also, there was request for information regarding the status of the non-attainment area with respect to the various pollutants. Below is a summary:

- MAG has confirmed as discussed during the meeting that the 10% ethanol requirement in the wintertime cannot be removed from statute. This is part of the State Implementation Plan (SIP). Although the area has been designated as a maintenance area for carbon monoxide (CO), the Clean Air Act section 110(l) states that EPA cannot approve a SIP revision that would interfere with attainment or maintenance. If this were removed, it would require a SIP revision and without that listed as an enforceable measure, it would interfere with maintenance of the CO standard.
- Although not discussed during the meeting, I confirmed with MAG that the both the Type 1 (federal RFG) and Type 2 (CARB Phase 2) specifications in the CBG program are included in the SIP and continue to be used as control measures with benefits that are in addition to the newer federal gasoline specifications. MAG indicated that they continue to be utilized and do provide air quality benefits above the federal requirements.
- As requested, this link on MAG's website has an update related to the attainment status of the air quality pollutants:
  http://www.azmag.gov/Fast_Facts/FFacts_AirQuality.asp

I believe this information answers the questions that were raised without the need for a separate meeting on this topic. If you have any questions or feel further discussion is needed, please let me know.

Thank you,

Michelle Wilson
Director, Transportation Fuels and Air Quality Programs
Arizona Department of Weights and Measures
4425 W. Olive Ave., Ste. 134, Glendale, AZ 85302-3844
602-771-4933

We appreciate your feedback! The Department of Weights and Measures values the opinion of our customers regarding the performance of our employees. Please take a moment to provide your feedback regarding your experience with our agency at https://www.surveymonkey.com/s/K79DB9J.

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 4:03 PM
To: Roger Fisk
Subject: FW: WSPA Comments on Proposed Fuel Statute/Reg Revisions
Attachments: WSPA Comments on AZDWM fuel reg revisions.82015.pdf

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From: Gina Grey [mailto:ggrey@wspa.org]
Sent: Thursday, August 20, 2015 2:47 PM
To: Michelle Wilson <mwilson@azdwm.gov>
Subject: WSPA Comments on Proposed Fuel Statute/Reg Revisions

Michelle: You'll find a WSPA attachment outlining a number of comments we have relative to AZDWM proposed revisions to the fuels-related statutes/regulations. Some we submitted earlier in the year and still feel our comments need to be addressed.

We're happy to discuss these further if you'd find that helpful. Appreciate the public process you are engaged in, and likewise appreciate being kept informed as you proceed with revisions. Thx.

Gina D. Grey
Vice President, Fuels, Climate Policy, NW/SW Regions
Western States Petroleum Association
Phone 480-595-7121
Cell 602-315-5713
Fax 480-595-7131

Western States Petroleum Association Comments on Arizona Department of Weights and Measures (AZDWM) Review of Draft Proposed Rule Revisions for A.R.S. Title 20 Related to Biofuels and General Fuel Provisions, and Review of Arizona Cleaner Burning Gasoline (CBG) Rules.

Statutes:

- 1-215 (7): Clean burning fuel – WSPA provides again the below comments on diesel from our December 2014 email:
    - A.R.S. 1-215 ss 7a: Recommend that this section be considered for removal, as we are not aware of emulsions of water-phased hydrocarbons being commercially used for clean burning diesel.
    - A.R.S. 1-215 ss 7b: Reference to 13 California Code of Regulations Section 2281. This is related to sulfur levels and is now obsolete so delete.
    - A.R.S. 1-215 ss 7c: Recommend that this section be considered for removal, as current diesel specifications meet the same requirements of this section.

- 41-2051 (1): Biodiesel definition and 41-2051 (5): Biomass Based Diesel definition: WSPA strongly supports definitions that are consistent with the FTC definitions (in the biomass based diesel case use FTC version from 16 CFR 306). We see nothing in the FTC definition of biomass-based diesel that differentiates co-processing vs. stand-alone processing of RD.

- 41-2083(M): Delete the last sentence:
  "For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product. ~~For diesel fuel that contains five percent or less by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies that transferee of any volume percent of biodiesel intentionally added to or known by the transferor to be in the product."~~

Regulations:

- R20-2-701 Definitions: Use biodiesel and biomass based diesel definitions as modified for ARS 41-2051 Definitions – per comment above we strongly support the FTC definitions.

- R20-2-704(A) WSPA provides the same comments as we provided regarding "Price and Grade Posting" in our January 2015 letter to AZDWM – separate ethanol from diesel-type fuel requirements as suggested:
  6. Describes diesel fuel as No. 1 diesel, #1 diesel, No. 2 diesel, #2 diesel, premium diesel, or biodiesel blend; and
  7. Describes gasoline ethanol blends meeting the requirements of R20-2-705(E) as ethanol flex fuel; and
  8. Identifies the unit of measure of the price, if it is other than per gallon

- R20-2-718(E)(3): exemptions to biofuels (QA/QC) requirements – clearer exclusion of biomass based diesel:

  A producer, supplier, or biofuel blender who produces, blends, or supplies diesel fuel blended with a biomass based diesel, as defined in A.R.S 41-2051, where the resulting fuel meets the requirements in ASTM D975 is exempt from this subsection.

CBG / AZRBOB Streamlining:

- We would propose that Arizona set up an Excel-type template that for each batch could be uploaded with the Predictive Model (PM) data into AZDWM's database. This could eliminate potential errors from having a technician manually input data into the agency's data base. Similar to the way in which WSPA companies report to CARB, our member's blend models can auto-populate the PM data into the excel template for CBG/AZRBOB and a copy of the template can be uploaded to AZDMW's data base.

- Section R20-2-751(H)(3) - Remove the requirement to provide the Department with a PM notification before transporting the gasoline. PM information is provided in the monthly report. Reporting prior to shipment is duplicative, burdensome and unnecessary.

- Section R20-2-752(E) - Remove the requirement that a registered supplier develop and maintain a unique laboratory QA/QC plan for Arizona if they are not certifying via an independent lab. The requirement to assemble, submit and maintain a unique and stand-alone laboratory plan for Arizona is duplicative, burdensome and unnecessary as the documents which make up the plan already exist as part of an overall laboratory QA/QC plan. In addition, CARB does not have a comparable requirement in their regulations and it is unclear why Arizona finds it necessary.

- WSPA asks that the state remove obsolete and outdated provisions including the wintertime oxygenate requirement. Ethanol is now routinely added for the purposes of RFS2 compliance and it is likely that CO is no longer an attainment issue as the vehicle fleet has turned over and the new fleet controls CO. We recognize the state may have done a preliminary look at this possibility, and has a number of thoughts, however WSPA would like to continue a dialogue on this possibility – especially based on what we've seen accomplished in other states.

- Reduce the frequency and scope of the RFG survey requirements. While WSPA does not yet have a concrete recommendation, we would like the state to look into what it would take and options it foresees for relaxing the survey requirements.

- Though not directly part of the regulation, WSPA asks that the state review the scope of its audits and endeavor to simplify them.

  - Reduce audit scope (e.g. 10 batches or 10%, max) – AZDWM to alert the facility as to which batches are in scope (to allow for adequate records gathering, etc.)
  - Limit batches to those that have already been reported (to AZDWM and EPA), so this will limit how current the batches are relative to the audit.

- Allow for spot checking of current batches for advice on current compliance – but not subject to the formal audit findings and reporting.
- Once every two years maximum.
- The second day of the audit should be reserved for follow-up and closure (half day may be acceptable).

Roger Fisk

From: Michelle Wilson
Sent: Friday, January 27, 2017 3:47 PM
To: Roger Fisk
Subject: FW: Sections 708 and 714
Attachments: Gasoline.docx

From: Mark Ellery [mailto:mark@caljet.com]
Sent: Thursday, June 09, 2016 9:26 AM
To: Michelle Wilson <mwilson@azda.gov>
Subject: Sections 708 and 714

Michelle,

See comments on attachment.

Best regards,
Mark

Mark V. Ellery
Manager, Quality Assurance and Research

The Jet Companies
5601 W. Van Buren Street
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R20-2-714. Requirements for Motor Fuels Other than Arizona CBG

A person that owns or operates a motor fuel dispensing site or transmix or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale at the motor fuel dispensing site or transmix or production facility meets ~~all~~ the ~~appropriate~~ requirements of the applicable specifications in R20-2-702, except that the maximum vapor pressure of non-ethanol blended gasoline, from May 1 through September 30, ~~gasoline shall meet the specifications in ASTM D4814 except maximum vapor pressure~~ shall be 9.0 pounds per square inch.

Comments:

- The re-written section above clears it up a bit, I think.
- *Gasoline-Ethanol* blends outside of the CBG Covered Area will adhere to the requirements of section 708 (receive 1.0 lb increase from what's stated in D4814),
- ASTM D4814 provides that, for the month of May, statewide, and half of September, just in the Northern region of the state, max vapor pressure may be 10.psi instead of 9.0 psi at retail and "other places".....so the intent of this section was/is to prevent non-ethanol blended gasoline from getting that 1.0 psi increase during May and half of Sept, as applicable.
- That said, as per section 708, ethanol-gasoline blends during May and half of September within the Northern region may have maximum vapor pressures of 11.0psi!

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the Administrative Code. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
PUBLIC SERVICES DIVISION
September 30, 2016

RULES

A.R.S. § 41-1001(17) states: "'Rule' means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency."

THE ADMINISTRATIVE CODE

The Arizona Administrative Code is where the official rules of the state of Arizona are published. The Code is the official codification of rules that govern state agencies, boards, and commissions. Virtually everything in your life is affected in some way by rules published in the Arizona Administrative Code, from the quality of air you breathe to the licensing of your dentist. This chapter is one of more than 230 in the Code compiled in 21 Titles.

ADMINISTRATIVE CODE SUPPLEMENTS

Rules filed by an agency to be published in the Administrative Code are updated quarterly. Supplement release dates are printed on the footers of each chapter:

First Quarter: January 1 - March 31
Second Quarter: April 1 - June 30
Third Quarter: July 1 - September 30
Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2016 is cited as Supp. 16-1.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the Arizona Administrative Register for recent updates to rule Sections.

ARTICLES AND SECTIONS

Rules in chapters are divided into Articles, then Sections. The "R" stands for "rule" with a sequential numbering and lettering system separated into subsections.

HISTORICAL NOTES AND EFFECTIVE DATES

Historical notes inform the user when the last time a Section was updated in the Administrative Code. Be aware, since the Office publishes each quarter by entire chapters, not all Sections are updated by an agency in a supplement release. Many times just one Section or a few Sections may be updated in the entire chapter.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature's website, www.azleg.gov. An agency's authority note to make rules are often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in the introduction of a chapter can be found at the Secretary of State's website, www.azsos.gov/services/legislative-filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency's exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the Arizona Administrative Register online at www.azsos.gov/rules, click on the Administrative Register link.

In the Administrative Code the Office includes editor's notes at the beginning of a chapter indicating that certain rulemaking Sections were made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

If you are researching rules and come across rescinded chapters on a different paper color, this is because the agency filed a Notice of Exempt Rulemaking. At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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Public Services managing rules editor, Rhonda Paschal, assisted with the editing of this chapter.

TITLE 3. AGRICULTURE

CHAPTER 7. DEPARTMENT OF AGRICULTURE – WEIGHTS AND MEASURES SERVICES DIVISION

Editor's Note: Chapter 7, including new Articles 1 through 10, were recodified from 20 A.A.C. 2 by the Department of Agriculture at 22 A.A.R. 2786. When recodified, all former Section references were revised to the new numbering scheme in this Chapter. Sections in this Chapter were originally adopted in 20 A.A.C. 2 under certain exemptions from the provisions of the Administrative Procedure Act, A.R.S. Title 41, Chapter 6. Refer to Laws 1997, Chapter 117, § 3 for more information (Supp. 16-3).

ARTICLE 1. ADMINISTRATION AND PROCEDURES

Article 1, consisting of Sections R3-7-101 through R3-7-117 and Table 1 recodified from R20-2-101 through R20-2-117 and Table 1, at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

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Article 3, consisting of Sections R3-7-301 through R3-7-313 recodified from R20-2-301 through R20-2-313, at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

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ARTICLE 10. STAGE I VAPOR RECOVERY

Article 10, consisting of Sections R3-7-1001 through R3-7-1013, and Table 1, recodified from R20-2-1001 through R20-2-1013, and Table 1, at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

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ARTICLE 1. ADMINISTRATION AND PROCEDURES

R3-7-101. Definitions

The definitions in A.R.S. §§ 41-2051, 41-2065, 41-2085, 41-2121, and 41-2131 and the following definitions apply to this Chapter:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "Administrative order" means a corrective action notice that the Department issues for a violation of A.R.S. Title 41, Chapter 15, or this Chapter, that orders a person to:
   a. Remove from use or sale, or dispose of, a commercial device, commodity, or liquid fuel;
   b. Stop selling a commodity or liquid fuel until the person provides documentation to the Department that the weight, measure, fuel quality, or price posting complies with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   c. Stop using a commercial device, commodity, liquid fuel, vapor recovery system, or vapor recovery system component, until the person provides documentation to the Department that the weight, measure, fuel, vapor recovery system, or component complies with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   d. Stop performing weighmaster, deputy weighmaster, registered service agency, or registered service representative licensed duties until the person provides documentation to the Department that the person is complying with the requirements of A.R.S. Title 41, Chapter 15, and this Chapter;
   e. Maintain labeling, policies, and cash register indicator displays according to A.R.S. Title 41, Chapter 15, and this Chapter;
   f. Stop constructing or modifying a vapor recovery system until the person complies with A.R.S. Title 41, Chapter 15, and this Chapter;
   g. Excavate a vapor recovery site according to R3-7-104(L);
   h. Comply with scheduling a test according to R3-7-104(L); or
   i. Retake a competency examination under A.R.S. § 41-2094.
3. "Application" means, for purposes of R3-7-108, forms designated as applications and all documents and additional information the Department requires an applicant to submit with an application.
4. "ASTM" means American Society for Testing and Materials.
5. "Area A" has the same meaning as in A.R.S. § 49-541.
6. "Area B" has the same meaning as in A.R.S. § 49-541.
7. "CARB" means the California Air Resources Board.
8. "CARB certified" means, with respect to a vapor recovery system, that the system has been certified in an executive order of the CARB.
9. "Certified prover" means a calibrated device, traceable to the National Institute of Standards and Technology, used for measuring liquid volume.
10. "Completion of construction" means the point when a gasoline dispensing site is placed into or returned into service following installation or modification of an approved vapor recovery system.
11. "Construction commenced" means the point in time when construction of a gasoline dispensing site begins:
    a. At a location where there was not one previously;
    b. To replace all gasoline storage tanks; or
    c. To replace, repair, or modify at least 75% of the facility's gasoline dispensing equipment.
12. "EPA" means the United States Environmental Protection Agency.
13. "Gasoline vapors" means volatile organic compounds in a gaseous state.
14. "Handbook 44" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2010 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
15. "Handbook 112" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
16. "Handbook 130" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (2009 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
17. "Handbook 133" means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov (January 2005 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions and amendments.
18. "NCWM" means the National Conference on Weights and Measures.
19. "Malfunction" means any failure of gasoline vapor recovery equipment to operate in the normal and usual manner.
20. "Modification" means adding to, replacing, or upgrading a site's stage II vapor recovery system, but does not include the repair or replacement of like parts.
21. "Monthly throughput" means the total amount of gasoline transferred into or dispensed from a gasoline dispensing site during one calendar month.
22. "Motor vehicle" means any vehicle equipped with a spark-ignited internal combustion engine, except vehicles that run on or are guided by rails, and vehicles that are designed primarily for travel through air or water.
23. "NIST" means the National Institute of Standards and Technology.
24. "Operator" means a person in control of, or having responsibility for, the daily operation of a gasoline dispensing site.
25. "Out-of-service tag" means a red rejection tag that signifies that a commercial device does not meet the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, or this Chapter.
26. "Person" as defined in A.R.S. § 41-2051, means an owner or operator of a commercial device or vapor recovery system, retail seller, wholesaler, registered supplier, pipeline

distributor, packer, manufacturer, licensee, transporter, or consignee.

27. "Placed in service" means the certification by a registered service agency or representative that a commercial device may be used, unless the Department orders otherwise.
28. "Placed-in-service report" means the form that a registered service representative completes and submits to the Department after placing a commercial device in service.
29. "Product transfer document" means the bill of lading, loading ticket, manifest, delivery receipt, invoice, or other customarily used documentation to denote delivery information for motor fuel.
30. "Retail" means the sale of a commodity to a consumer for profit by someone in the business of selling the commodity.
31. "Seal of authority" means a stamp or press of the Department's official mark, issued to a public weighmaster, certifying the weighmaster's authority to issue weight certificates.
32. "Seizure" means taking into physical possession, or otherwise securing for evidence, a commodity, liquid fuel, weight, measure, commercial device, or component of a device by the Department.
33. "Stop-sale, stop-use tag" means a blue tag or blue tape that signifies that a commercial device, including a vapor recovery system or vapor recovery component, or a commodity or liquid fuel, does not meet the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 130, Handbook 133, CARB Executive Orders, or this Chapter.
34. "Third-party registered service agency" means a registered service agency that performs work under contract for any business or company.
35. "Underground storage tank" means a tank as described in A.R.S. § 491001(18).
36. "Unit" means a quantity adopted as a standard of measurement.
37. "Vapor recovery registered service representative No. 1" means an individual to whom the Department has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title 41, Chapter 15 or this Chapter including annual vapor-recovery tests.
38. "Vapor recovery registered service representative No. 2" means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor-recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.
39. "Warning tag" means a yellow tag that signifies a commercial device, vapor recovery system, or vapor recovery component does not comply with A.R.S. Title 41, Chapter 15, Handbook 44, CARB Executive Orders, or this Chapter.
40. "Weight certificate" means a document, issued by a public weighmaster in a form approved by the Department, that certifies the accuracy of the weight of the commodity measured.

Historical Note

New Section R3-7-101 recodified from Section R20-2-101 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-102. Metrology Laboratory Testing and Calibration Fees

A. For all services of the Department's Metrology Laboratory, the Department shall charge $110 per hour with a minimum charge of $50.

B. In addition to the fee in subsection (A), the Department shall charge for travel and per diem at the rates established under A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

Historical Note

New Section R3-7-102 recodified from Section R20-2-102 at 22 A.A.R. 2786, effective August 16, 2016 (Supp. 16-3).

R3-7-103. Licensing and Fees

A. A license is effective on the first day of the month following the date that the license application is filed with the Department. If an application is filed on the first of a month and is complete and accurate, the license is effective on the first day of that month.

B. A payment is delinquent if the Department does not receive the payment by the due date. The Department shall not process a license or renewal application for which payment is delinquent.

C. The Department shall prorate a license renewal fee if the licensee's first renewal is fewer than 12 months from the date that license is issued.

D. The Department shall issue a full refund to a licensee for a license renewal fee only if the licensee provides written notice to the Department before the renewal fee due date that the renewal is not needed.

Historical Note

New Section R3-7-103 recodified from Section R20-2-103 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-104. Administrative Enforcement Action

A. The Department shall take progressive enforcement action for a violation of A.R.S. Title 41, Chapter 15, CARB Executive Orders, Handbook 44, Handbook 130, Handbook 133, or this Chapter.

B. The Department shall provide a copy of its inspection report to the person who owns or operates a location that the Department inspects. The report shall include the inspection results, violations, and enforcement action.

C. The person who owns or operates a location inspected by the Department may request a hearing under R3-7-109 to dispute the inspection results, violation, or enforcement action.

D. The Department shall suspend, revoke, or refuse to renew any license if the licensee does not comply with an enforcement action imposed under this Section.

E. A maximum civil penalty may be doubled as stated in A.R.S. § 41-2115(B).

F. Commercial device.

1. The Department shall place out of service an unlicensed commercial device that it determines has been in use for more than 30 days.
2. The Department shall confiscate a commercial device when a person violates an administrative order related to that commercial device, or removes a warning tag, out-of-service tag, or stop-sale, stop-use tag issued to that commercial device without Department authority.
3. The Department shall issue an out-of-service tag or a stop-sale, stop-use tag if a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the person who owns or operates the commercial device.

a. A person shall not use a commercial device that has an out-of-service tag until the person repairs the commercial device.
b. A person shall not sell or use a commercial device that has a stop-sale, stop-use tag until the commercial device meets the requirements of A.R.S. Title 41, Chapter 15, Handbook 44, and this Chapter.

4. The Department shall issue a warning tag when a commercial device is not in compliance with the requirements in Handbook 44 and the lack of compliance creates a situation favorable to the public. The Department shall issue an out-of-service tag if the commercial device is not repaired by the deadline on the warning tag. A person shall not use a commercial device after the period specified on the warning tag for repair unless the commercial device complies with A.R.S. Title 41, Chapter 15, Handbook 44, and this Chapter.
5. The Department shall issue an out-of-service tag if a commercial device does not have a non-tampering seal affixed.
6. The Department shall issue an out-of-service tag if a Department inspector cannot conduct an inspection of a commercial device because of a potential safety risk that the person who owns or operates the commercial device does not correct within 30 minutes of the attempted inspection.
7. The Department shall issue an out-of-service tag if a commercial device cannot begin weighing, measuring, metering, or counting at zero.
8. The Department shall issue a warning tag if the manufacturer's plate on a commercial device does not contain the information required by Handbook 44, is missing, or is unreadable. The Department shall issue an out-of-service tag if the person who owns or operates a commercial device does not obtain a compliant manufacturer's plate by the 30-day deadline imposed on the warning tag.
9. The Department shall issue a warning tag to a person who did not construct a large-scale approach according to Handbook 44. The Department shall issue a stop-sale, stop-use tag if the large-scale approach is not made compliant by the deadline imposed on the warning tag.
10. In addition to any enforcement action under subsections (F)(1) through (9):
    a. If the Department finds during an inspection that a commercial device does not comply with the requirements of A.R.S. Title 41, Chapter 15, or this Chapter and the lack of compliance favors the owner or operator of the commercial device:
        i. The Department shall impose a $300 civil penalty on the person who owns or operates the commercial device; and
        ii. The Department shall impose a $500 civil penalty on the person who owns or operates the commercial device for each reinspection until the commercial device is in compliance.
    b. If the Department finds during an inspection that a person who weighs a product on a commercial device violates Handbook 44 or does not post rates according to Handbook 44 or this Chapter:
        i. The Department shall issue an administrative order to the person at the conclusion of the inspection and impose a $300 civil penalty; and
        ii. The Department shall issue an administrative order to the person and impose a $500 civil penalty at each reinspection until the person complies with Handbook 44 and this Chapter.

G. Public and deputy weighmaster.
1. The Department shall issue an administrative order if a public weighmaster's:
    a. Weigh tickets are not in numbered sequence or are missing,
    b. Seal or press is not readable, or
    c. Records are not maintained according to R3-7-505.
2. The Department shall issue an administrative order and impose a $500 civil penalty on a public weighmaster if:
    a. The public weighmaster's weigh tickets contain inaccurate information,
    b. The public weighmaster violates an administrative order, or
    c. The public weighmaster misuses a seal or press or has an unauthorized seal or press.
3. The Department shall confiscate a seal or press if a public weighmaster violates an administrative order issued to the public weighmaster.
4. The Department shall suspend, revoke, or refuse to renew a license if a public weighmaster does not comply with an enforcement action under this Section.
5. The Department shall issue an administrative order to a person who performs public weighmaster duties without a license.
6. If a public weighmaster permits an unlicensed person to perform deputy weighmaster duties, the Department shall:
    a. Impose a $300 civil penalty on the public weighmaster for the first time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties;
    b. Impose a $500 civil penalty on a public weighmaster for the second time the public weighmaster permits an unlicensed person to perform deputy weighmaster duties; and
    c. Confiscate the public weighmaster's records, equipment, and devices if the public weighmaster permits an unlicensed person to perform deputy weighmaster duties more than twice.

H. Package.
1. The Department shall issue an administrative order to an owner or an employee of the owner where a package inspection is held if a package is not in compliance with a requirement in Handbook 130 or Handbook 133. The person to whom the administrative order is issued shall correct the package violation by:
    a. Returning the package to the packer or manufacturer,
    b. Labeling the package to reflect its correct quantity,
    c. Placing a notice on the package that states the violation and pricing the package to reflect its correct quantity, or
    d. Repackaging the commodity so the package contains the quantity represented.
2. In addition to an administrative order, the Department shall impose a $500 civil penalty per lot on a person who violates a requirement in Handbook 130 or Handbook 133.

I. Price verification.
1. The initial inspection of a retail location for price verification is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.
2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price verification reinspection if the

violation cannot be corrected within 30 minutes of the Department completing the reinspection.

a. The Department shall impose a $100 civil penalty per violation on a person who fails a reinspection if the Department finds more than one item at more than its posted price.

b. The Department shall impose a $200 civil penalty per violation on a person who fails a second reinspection. The Department shall increase the per violation civil penalty imposed by $100 for each subsequent reinspection until the violation is corrected.

3. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (I)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.

4. The Department shall issue a warning to a person who does not have a written price-error policy. The Department shall impose a $500 civil penalty if the person does not have a written price-error policy upon reinspection.

5. The Department shall issue a warning to a person who does not have a price display visible to the public at a check-out location. The Department shall issue an out-of-service tag if the person does not have a price display visible to the public at a check-out location upon reinspection.

J. Price posting.

1. The initial inspection of a retail location for price posting is for educational purposes and an enforcement action will not be imposed for a violation identified during the initial inspection.

2. The Department shall issue a stop-sale, stop-use tag to a person who fails a price posting reinspection if the violation cannot be corrected within 30 minutes of the Department completing the reinspection.

3. The Department shall impose a $50 civil penalty for each inspected lot not priced if a person fails a reinspection with a score of less than 96 percent.

4. The Department shall impose a $100 civil penalty for each inspected lot not priced if a person fails a second reinspection.

5. If the Department receives and substantiates a complaint about a person against whom the Department took an administrative enforcement action under subsection (J)(2) within the 60 days before the date of the complaint, the Department shall issue a stop-sale, stop-use tag and impose a civil penalty that is $100 more than the civil penalty that the Department previously imposed against this person.

K. Fuel quality and labeling.

1. The Department shall issue a warning tag to a person whose fuel dispenser labeling violates A.R.S. Title 41, Chapter 15, or this Chapter. The Department shall issue an out-of-service tag to the person if the person does not correct the fuel dispenser labeling violation within the time specified on the warning tag.

2. The Department shall issue an administrative order to a person whose fuel storage tank labeling or external street signage violates A.R.S. Title 41, Chapter 15, or this Chapter. The Department shall impose a $300 civil penalty if the person does not correct the labeling or signage violation within the time specified in the administrative order.

3. The Department shall issue an administrative order and impose a $500 per octane level civil penalty to a person who violates a fuel-quality requirement under A.R.S. Title 41, Chapter 15, or this Chapter. The person shall correct the violation by:

a. Removing non-compliant motor fuel from the storage tank and replacing it with compliant motor fuel,

b. Selling the motor fuel at the correct octane level,

c. Adding sufficient compliant motor fuel to the storage tank to bring the motor fuel in the storage tank into compliance,

d. Removing all water from the storage tank, or

e. Removing the non-compliant motor fuel to another area within the state if the motor fuel complies with specifications of that area.

4. The Department shall issue an administrative order to a person who does not provide requested product transfer documentation within 24 hours of the Department's request. The Department shall impose a $300 civil penalty on a person who provides the requested documentation between 24 and 72 hours. The Department shall impose a $500 civil penalty on a person who does not provide the requested documentation within 72 hours.

L. Vapor recovery.

1. The Department shall issue an administrative order to stop construction at a vapor recovery site and impose a $500 civil penalty on a person who:

a. Begins construction or makes a major modification without an authority to construct plan approval,

b. Does not comply with the authority to construct plan approval, or

c. Does not obtain an approved change order for construction or major modification of the vapor recovery site unless:

i. The vapor recovery system and its components comply with A.R.S. Title 41, Chapter 15, and this Chapter; and

ii. The vapor recovery system passes the required vapor recovery tests according to A.R.S. Title 41, Chapter 15, and this Chapter.

2. The Department shall issue an administrative order requiring a person to excavate a vapor recovery site if the person covers a vapor recovery component before a Department pre-burial inspection and shall impose a $500 civil penalty if the excavated system does not pass required vapor recovery tests according to A.R.S. Title 41, Chapter 15, and this Chapter.

3. The Department shall issue an administrative order if a person fails to ensure that a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test within the designated test month. The Department shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.

4. The Department shall impose a $100 civil penalty on a person who does not have an authority to construct plan approval available for inspection at the construction site during normal business hours.

5. The Department shall issue a warning tag to a person whose vapor recovery system labeling does not comply with the authority to construct plan approval. The Department shall issue a stop-sale, stop-use tag and impose a $500 civil penalty on a person who does not correct a labeling violation within the time specified on a warning tag.

6. The Department shall issue a stop-sale, stop-use tag to a person whose vapor recovery system fails a test under R3-7-905 or R3-7-910. If the test failure is isolated to a system component, the Department's stop-sale, stop-use tag shall pertain to that component so the rest of the system may operate.
7. The Department shall impose a $500 civil penalty and issue another stop-sale, stop-use tag to a person who violates a stop-sale, stop-use tag. The Department shall impose a $500 civil penalty and revoke, suspend, or refuse to renew a commercial device license if a person removes a stop-sale, stop-use tag without approval.

M. Registered service agency and registered service representative.

1. If a registered service agency submits to the Department an inaccurate or incomplete placed-in-service or test report, the Department shall:
   a. Return the inaccurate or incomplete placed-in-service or test report to the agency for correction, and
   b. Impose a $50 civil penalty on the agency each time the agency resubmits a placed-in-service or test report without making all needed corrections.
2. The Department shall impose a $300 civil penalty on a registered service representative who incorrectly:
   a. Installs a commercial device,
   b. Repairs a commercial device,
   c. Tests a vapor recovery system, or
   d. Repairs a vapor recovery system.
3. If an unlicensed person represents itself as a registered service agency, the Department shall:
   a. Issue an administrative order,
   b. Impose a $500 civil penalty and confiscate the unlicensed person's calibration standards if the unlicensed person violates the administrative order, and
   c. Deny a registered service agency license to the unlicensed person if the unlicensed person fails to comply with the enforcement action under this subsection.
4. The Department shall issue an administrative order to an unlicensed person who performs the duties of a registered service representative. The Department shall impose a $300 civil penalty on the registered service agency for which the unlicensed individual works.
5. The Department shall issue an administrative order if a registered service representative places a commercial device into service without Department authorization. The Department shall impose a $500 civil penalty on the registered service agency whose representative places a commercial device into service without Department authorization.
6. The Department shall impose a $500 civil penalty on a registered service agency whose registered service representative uses a metrology standard or vapor recovery air-to-liquid (A/L) ratio testing equipment that is not certified according to this Chapter. The Department shall confiscate a metrology standard or A/L ratio testing equipment if a registered service representative uses the uncertified standard or equipment after the registered service agency is penalized. The Department shall return the standard or equipment when it is properly certified.
7. The Department shall issue an administrative order to a vapor recovery registered service agency or person who owns a vapor recovery system that does not, according to A.R.S. Title 41, Chapter 15, and this Chapter:
   a. Notify the Department of a test date and time,
   b. Begin a test at the approved time,
   c. Appear for a witnessed test,
   d. Close a vapor recovery system for repairs if the system fails, or
   e. Perform a test.
8. The Department shall impose a $300 civil penalty on a vapor recovery registered service agency that violates subsection (M)(7) twice in 12 months.
9. If a registered service agency's registered service representative does not attach a non-tampering seal on a commercial device that is equipped for a seal, the Department shall:
   a. Impose a $300 civil penalty on the registered service agency for the first violation, and
   b. Impose a $500 civil penalty on the registered service agency for each subsequent violation by the registered service representative.
10. If a registered service representative determines that a vapor recovery system or component is not in compliance with A.R.S. Title 41, Chapter 15, or this Chapter, the registered service representative shall:
    a. Secure the non-compliant vapor recovery system or component from use before the registered service representative leaves the vapor recovery site or until the system or component passes the tests required by R3-7-910;
    b. Notify the Department of the secured, non-compliant vapor recovery system or component before leaving the vapor recovery site; and
    c. Notify the Department of the time of the test required by R3-7-910 by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner.
11. If a registered service representative fails to comply with subsection (M)(10)(b) or (c), the Department shall:
    a. Impose a $300 civil penalty on the registered service representative;
    b. Issue an administrative order, if the registered service representative is penalized under this subsection three times in 12 months, requiring the registered service representative to take and pass the licensing competency examination; and
    c. Suspend or revoke the license of the registered service agency employing the registered service representative if the registered service representative does not comply with an order issued under subsection (M)(11)(b).

Historical Note

New Section R3-7-104 recodified from Section R20-2-104 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-105. Repealed

Historical Note

Repealed Section R3-7-105 recodified from repealed Section R20-2-105 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-106. Repealed

Historical Note

Repealed Section R3-7-106 recodified from repealed Section R20-2-106 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-107. Repealed

Historical Note
Repealed Section R3-7-107 recodified from repealed Section R20-2-107 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-108. Time-frames for Licenses, Renewals, and Authorities to Construct

A. For each type of license, renewal, or authority issued by the Department, the overall time-frame described in A.R.S. § 41-1072(2) is set forth in Table 1.

B. For each type of license, renewal, or authority issued by the Department, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is set forth in Table 1 and begins on the date the Department receives an application.
1. If the application is not administratively complete, the Department shall send a deficiency notice to the applicant.
   a. The deficiency notice shall state each deficiency and the information needed to complete the application.
   b. Within the time provided in Table 1 for response to the deficiency notice, the applicant shall submit to the Department the missing information specified in the deficiency notice. The time-frame for the Department to finish the administrative completeness review is suspended from the date the Department mails the deficiency notice to the applicant until the date the Department receives the missing information.
   c. If the applicant does not submit the missing information within the time to respond to the deficiency notice set forth in Table 1, the Department shall send a written notice to the applicant informing the applicant that the application is deemed withdrawn. An applicant who desires to reapply shall begin the application process anew.
2. If the application is administratively complete, the Department shall send a written notice of administrative completeness to the applicant.

C. For each type of license, renewal, or authority issued by the Department, the substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the date the Department sends written notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the Department may make one comprehensive written request for additional information. The applicant shall submit the additional information within the time provided in Table 1 for response to a comprehensive written request for additional information. The time-frame for the Department to finish the substantive review is suspended from the date the Department mails the request until the Department receives the information.
2. If the applicant does not submit the requested additional information within the time-frame in Table 1, the Department shall issue a written notice informing the applicant that the application is deemed withdrawn. The applicant may request in writing that the Department deny the application within 15 days of the date of the notice of withdrawal. An applicant who desires to reapply shall begin the application process anew.
3. The Department shall issue a written notice of denial of license, renewal, or authority if the Department determines that the applicant does not meet all of the substantive criteria required by A.R.S. Title 41, Chapter 15, and this Chapter for a license, renewal, or authority. The notice of denial shall include:
   a. Reasons for the denial, with citations to the statutes or rules on which the denial is based; and
   b. The name and telephone number of a Department employee who can answer questions regarding the application process.
4. If the applicant meets all of the substantive criteria required by A.R.S. Title 41, Chapter 15, and this Chapter for a license, renewal, or authority the Department shall issue the license, renewal, or authority to the applicant.

D. The time period for an applicant to respond to a deficiency notice or request for additional information shall commence on the date of personal service or the postmark date.

E. In computing any time period prescribed in this Section, the day of the act, event, or default shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or state holiday. The computation shall include intermediate Saturdays, Sundays and holidays.

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

Historical Note
New Section R3-7-108 recodified from Section R20-2-108 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-109. Administrative Hearing Procedures

A.R.S. Title 41, Chapter 6, Articles 6 and 10 apply to the Department's hearings.

Historical Note
New Section R3-7-109 recodified from Section R20-2-109 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-110. Motion for Rehearing or Review

A. Except as provided in subsection (G), any party in a contested case or appealable agency action before the Department who is aggrieved by a decision rendered in the case may file with the Department, a written motion for rehearing or review of the decision, pursuant to A.R.S. Title 41, Chapter 6, Article 10, specifying the particular grounds for the motion.

B. A motion for rehearing or review may be amended at any time before it is ruled upon by the Department. A response may be filed within 15 days after service of the motion or amended motion by any other party. The Department may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may only be granted for any of the following reasons materially affecting the moving party's rights or ability to receive a fair hearing:
1. Any irregularity in the hearing, order, or abuse of discretion by the administrative law judge or the Department.
2. Misconduct of the Department, the administrative law judge, or the prevailing party.
3. Accident or surprise that could not have been prevented by ordinary prudence.
4. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the original hearing.
5. Excessive or insufficient penalties.
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing.

7. That the decision is not justified by the evidence or is contrary to law.

D. The Department may affirm or modify its decision, or grant a rehearing or review. After giving the parties or their counsel notice and an opportunity to be heard, the Department may grant a rehearing or review for a reason not stated in a party's motion. An order granting a rehearing or review shall specify the grounds on which the rehearing or review is granted. The rehearing or review shall cover only those matters so specified.

E. The Department, within the time for filing a motion for rehearing or review under this rule, may order a rehearing or review for any of the reasons set forth in subsection (C), after giving the parties notice and an opportunity to be heard.

F. When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party has 15 days from the date of service to serve opposing affidavits. The Department may extend the period to respond up to 20 days for good cause, or by written stipulation of the parties. If the Department permits reply affidavits, the replying party has five days in which to serve them.

G. If the Department makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public peace, health, and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Department may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Department's final decision.

Historical Note
New Section R3-7-110 recodified from Section R20-2-110 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-111. Repealed

Historical Note
Repealed Section R3-7-111 recodified from repealed Section R20-2-111 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-112. Repealed

Historical Note
Repealed Section R3-7-112 recodified from repealed Section R20-2-112 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-113. Renumbered

Historical Note
Renumbered Section R3-7-113 recodified from renumbered Section R20-2-113 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-114. Renumbered

Historical Note
Renumbered Section R3-7-114 recodified from renumbered Section R20-2-114 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-115. Renumbered

Historical Note
Renumbered Section R3-7-115 recodified from renumbered Section R20-2-115 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-116. Renumbered

Historical Note
Renumbered Section R3-7-116 recodified from renumbered Section R20-2-116 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-117. Renumbered

Historical Note
Renumbered Section R3-7-117 recodified from renumbered Section R20-2-117 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

Table 1. Time-frames (in days)

Type of License	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information	Overall Time-frame
Commercial Device R3-7-201	10	20	30	20	40
Public Weighmaster R3-7-501	10	20	30	20	40
Registered Service Agency/Representative R3-7-601	10	20	30	20	40
Authority to Construct R3-7-904	10	20	30	20	40

Historical Note
Article 1, Table 1, Time-frames (in days), recodified from 20 A.A.C. 2, Article 1, Table 1, Time-frames (in days), at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 2. COMMERCIAL DEVICES

R3-7-201. Licensing Process

Before using a commercial device, a person or a contracted registered service representative shall apply for a license for the commercial device. The commercial device may be used without a license for up to 30 days after an application is filed with the Department. The application shall be on a form supplied by the Department that includes:

1. The applicant's name, address, and telephone number;

2. The name, address, and telephone number of the location where the commercial device will be operated;
3. A description of the commercial device; and
4. The applicant's signature.

Historical Note
New Section R3-7-201 recodified from Section R20-2-201 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-202. Repealed

Historical Note
Repealed Section R3-7-202 recodified from repealed Section R20-2-202 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-203. Approval, Installation, and Sale of Devices

A. A commercial device installed or placed in use after January 1, 1975, shall be prototype-approved by NCWM or have a certificate of approval from the California Type Evaluation Program.
1. If a commercial device has been continuously licensed since January 1, 1975, the commercial device is exempt from NCWM or California Type Evaluation Program prototype approval.
2. If a commercial device exempt under subsection (A)(1) fails the specifications, tolerances, or other technical requirements of Handbook 44 during a Department inspection, the Department shall revoke the commercial device license and a person shall not use the device commercially.

B. The seller of a commercial device that is remanufactured for the purpose of commercial sale shall mark the commercial device as remanufactured.

Historical Note
New Section R3-7-203 recodified from Section R20-2-203 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-204. Livestock and Vehicle Scale Installation

A. Portable livestock and portable vehicle scales shall be designed to be moveable from one location to another.

B. Portable scales and low-profile electronic scales shall be accessible for maintenance.

C. Notwithstanding Handbook 44, vehicle and livestock scales installed above ground shall have 2 feet minimum clearance from the bottom of the lowest platform support girder to the ground.

D. Notwithstanding Handbook 44, vehicle and livestock scales, installed with a pit, shall have 2 feet minimum clearance from the bottom of the main girder that is lowest in platform support to the pit floor.

Historical Note
New Section R3-7-204 recodified from Section R20-2-204 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 3. PACKAGING, LABELING, AND METHOD OF SALE

R3-7-301. Repealed

Historical Note
Repealed Section R3-7-301 recodified from repealed Section R20-2-301 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-302. Handbook 130 and Handbook 133

A. A person shall comply with all packaging, labeling, and method of sale requirements in Handbook 130, except as otherwise stated in this Chapter. A person shall ensure that packaged commodities kept, offered, exposed for sale, sold, or in the process of delivery are weighed, measured, and inspected using sampling and testing procedures designated in Handbook 133, except as otherwise stated in this Chapter.

B. A retail seller shall ensure that a package that is offered for sale in a variable weight, measurement, or count, and that is weighed, measured, or counted at the time of sale, includes a label on the package identifying the net weight, measurement, or count, item description, and packer's name if the packer is not the retailer. Pre-packaged produce does not require a label on each package if the retailer:
1. Clearly labels the price-per-pound where the packaged produce is displayed, and
2. Deducts a tare for the packaging from the gross weight at the time of sale.

C. A retail seller shall price a commodity at the date and time that it is ordered by a customer.

D. A retail seller who offers, exposes, or advertises a commodity for sale or rent shall post a definite, plain, and conspicuous price on the commodity or adjacent to where the commodity is displayed. If the price of the commodity is by weight, measure, or count, the retailer shall place the price per weight, measure, or count on the commodity or adjacent to where the commodity is displayed. If a retailer offers a commodity for sale or rent at a price reduced by a percentage or a fixed amount from a previously offered price, the retailer shall place the reduction or reduced price on the commodity or adjacent to where the commodity is displayed.

E. A person who owns or operates a plant nursery shall label each commodity with its identity, container size, and price, or post a sign with this information adjacent to the point of display.

F. A retail seller shall ensure that the price of each item purchased is displayed visibly to the public at each check-out location.

Historical Note
New Section R3-7-302 recodified from Section R20-2-302 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-303. Repealed

Historical Note
Repealed Section R3-7-303 recodified from repealed Section R20-2-303 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-304. Repealed

Historical Note
Repealed Section R3-7-304 recodified from repealed Section R20-2-304 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-305. Repealed

Historical Note
Repealed Section R3-7-305 recodified from repealed Section R20-2-305 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-306. Repealed

Historical Note

Historical Note
Repealed Section R3-7-306 recodified from repealed

Section R20-2-306 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-307. Repealed

Historical Note
Repealed Section R3-7-307 recodified from repealed Section R20-2-307 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-308. Repealed

Historical Note
Repealed Section R3-7-308 recodified from repealed Section R20-2-308 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-309. Repealed

Historical Note
Repealed Section R3-7-309 recodified from repealed Section R20-2-309 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-310. Repealed

Historical Note
Repealed Section R3-7-310 recodified from repealed Section R20-2-310 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-311. Repealed

Historical Note
Repealed Section R3-7-311 recodified from repealed Section R20-2-311 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-312. Repealed

Historical Note
Repealed Section R3-7-312 recodified from repealed Section R20-2-312 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-313. Repealed

Historical Note
Repealed Section R3-7-313 recodified from repealed Section R20-2-313 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 4. PRICE VERIFICATION AND PRICE POSTING

R3-7-401. Repealed

Historical Note
Repealed Section R3-7-401 recodified from repealed Section R20-2-401 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-402. Price-posting Inspection Procedure and Violation Exceptions

A. The Department shall choose one item that was used and four adjacent items that were not used for a price-verification inspection as the samples for a price-posting inspection.

B. If the Department finds an alleged price-posting violation involving an item used during its price-verification inspection, the Department shall record the price-posting violation on the inspection report.

C. The following are price-posting violations:
1. No price is posted or displayed for an inspected item, or
2. Less than 98 percent of the prices of inspected items are posted accurately.

D. The following are not price-posting violations:
1. A price is posted on a shelf where an item is displayed rather than marked on the item individually;
2. A price is posted on the shelf at the farthest left side of all items with the same price for up to 3 feet of shelf space. The price for commodities with the same uniform price code may be more than three feet from the price posted if they are all displayed in the same location;
3. A price posted above the highest item in a vertical location is the price of all items in that location;
4. A storage area that is posted as a storage area for which a customer should ask for assistance;
5. A restocking area that is posted as a restocking area for which a customer should ask for assistance;
6. A price is posted on a hook in front of or behind a row of items but the price is clearly visible or a notice is clearly visible stating that the price is posted behind the row of items;
7. An item is located in an advertising display without a posted price but a notice is posted informing a customer to ask for price information assistance about an item in the display. A service counter is not an advertising display;
8. A menu-type sign at a point of display that lists the name and price of every item at the point of display in text at least 3/8” high;
9. A point of display contains more than one item posted with the manufacturer’s name or logo and the price and name of each item in the point of display is posted;
10. A price is posted only at each entrance to a store but that price is the price of each item in the store, or at each entrance to a department within a store but that price is the price of each item in the department; and
11. A notice states that there is an additional charge based on an item’s size and each size and the additional charge for each size is posted.

Historical Note
New Section R3-7-402 recodified from Section R20-2-402 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-403. Repealed

Historical Note
Repealed Section R3-7-403 recodified from repealed Section R20-2-403 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-404. Repealed

Historical Note
Repealed Section R3-7-404 recodified from repealed Section R20-2-404 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-405. Repealed

Historical Note
Repealed Section R3-7-405 recodified from repealed Section R20-2-405 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-406. Repealed

Historical Note
Repealed Section R3-7-406 recodified from repealed Section R20-2-406 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-407. Repealed

Historical Note
Repealed Section R3-7-407 recodified from repealed Section R20-2-407 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-408. Repealed

Historical Note
Repealed Section R3-7-408 recodified from repealed Section R20-2-408 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-409. Repealed

Historical Note
Repealed Section R3-7-409 recodified from repealed Section R20-2-409 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-410. Repealed

Historical Note
Repealed Section R3-7-410 recodified from repealed Section R20-2-410 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-411. Repealed

Historical Note
Repealed Section R3-7-411 recodified from repealed Section R20-2-411 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-412. Repealed

Historical Note
Repealed Section R3-7-412 recodified from repealed Section R20-2-412 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 5. PUBLIC WEIGHMASTERS

R3-7-501. Qualifications; License and Renewal Application Process

A. In addition to the requirements of A.R.S. § 41-2093, to be a public weighmaster or a deputy public weighmaster, a person shall:
1. Be at least 18 years old,
2. Be able to operate a scale accurately, and
3. Be able to execute weight certificates properly.

B. A person shall not perform the duties of a public weighmaster or deputy public weighmaster until the person passes the written weighmaster examination administered by the Department. A person may not take the examination more than two times in six months.

C. A person that meets the qualifications for public weighmaster or deputy public weighmaster may apply for a license on a form supplied by the Department.
1. The application form includes:
   a. The applicant's name, address, and telephone number;
   b. A statement by the applicant that the applicant knows and understands weighmaster laws and rules;
   c. The name, address, and telephone number of each of the applicant's public weighmaster locations; and
   d. The applicant's signature.
2. The public weighmaster's application form also includes:
   a. The name of each deputy public weighmaster;
   b. The name and address of the scale; and
   c. The scale description.
3. An applicant may be required to submit evidence of qualifications and shall be examined regarding competence or qualifications.

D. Before the Department issues or renews a public weighmaster or deputy public weighmaster license, the applicant shall pay the required fees and provide information required in A.R.S. Title 41, Chapter 15, and this Chapter.

E. The Department does not charge a fee to process a change in name or address.

Historical Note
New Section R3-7-501 recodified from Section R20-2-501 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-502. Duties

A public weighmaster shall:
1. Be responsible for the daily operation and maintenance of the licensed scale used when performing weighmaster duties;
2. Use scales according to applicable laws and rules; and
3. Be responsible for all acts performed by any deputy public weighmaster designated by the weighmaster.

Historical Note
New Section R3-7-502 recodified from Section R20-2-502 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-503. Grounds for Denying License or Renewal; and Disciplinary Action

A. The Department may deny a weighmaster license for any of the following reasons:
1. Providing false or misleading information;
2. Failing to meet the requirements stated in this Article; or
3. Any of the reasons stated in subsections (B)(1) through (9).

B. The Department may impose disciplinary action against, or refuse to renew a public weighmaster's license for any of the reasons stated in subsection (A)(1) or (2), or if the Department has determined that the public weighmaster:
1. Does not have the ability to weigh accurately;
2. Has not correctly made weight certificates;
3. Has been found to have violated any provision of A.R.S. Title 41, Chapter 15, or this Chapter;
4. Has falsified a weight certificate;
5. Has delegated authority to someone other than a licensed public weighmaster or deputy public weighmaster;
6. Has improperly used a weighmaster's seal of authority;
7. Has presigned certificates for later use;
8. Has issued a weight certificate on which changes or alterations were made; or
9. Has used a scale for public weighing that is not properly licensed.

Historical Note
New Section R3-7-503 recodified from Section R20-2-503 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-504. Scales and Vehicle Weighing

A. When making a weight determination, a public weighmaster shall use a weighing device that is suitable for the function.

B. The public weighmaster shall not use a scale to weigh a load that exceeds the normal or rated capacity of the scale.

C. The owner or user of a weighing device is responsible for the accuracy of the device used by a public weighmaster. The owner or user shall comply with Handbook 44.

D. If a scale is equipped with a printing device, it shall be used for all relevant entries on the weight certificate.
E. The Department shall separately license and regulate each scale location.
F. A weighmaster shall weigh any vehicle or combination of vehicles on a scale having a platform that fully accommodates the vehicle or combination of vehicles as one unit.
G. If a combination of vehicles is divided into separate units to be weighed, each separate unit shall be entirely disconnected before weighing and a separate weight certificate shall be issued for each unit.

Historical Note
New Section R3-7-504 recodified from Section R20-2-504 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-505. Weight Certificates
A. In issuing a weight certificate, a public weighmaster shall enter only those weight values that the weighmaster or deputy weighmaster has accurately and personally determined.
B. A public weighmaster shall not make any entries on a weight certificate issued by another person.
C. By signing a weight certificate, a weighmaster or the weighmaster's deputy shall be responsible for the accuracy of all entries on the weight certificate.
D. A weight certificate is valid only when properly signed and sealed by the issuing weighmaster or the weighmaster's deputy.
E. If an error is made on a weight certificate, the weighmaster shall void the certificate and issue a new certificate. No changes or alterations shall be made on a certificate.
F. A weight certificate shall state:
1. The date of issuance;
2. The name of the declared owner, agent, or consignee of the material weighed;
3. The accurate weight of the material weighed or counted;
4. The means by which the material is being transported at the time it is weighed or counted;
5. An identification number of the transporting unit, including a license number; and
6. The following statement: "PUBLIC WEIGHMASTER'S CERTIFICATE OF WEIGHT AND MEASURE. This is to certify that the described merchandise was weighed, counted, or measured by a public or deputy weighmaster, and when properly signed and sealed, is prima facie evidence of the accuracy of the weight, count, or measure shown as prescribed by law."

G. A public weighmaster shall maintain a legible copy of each weight certificate issued at each scale location, for a minimum of one year. A weighmaster also shall ensure that weight certificates are consecutively numbered and filed numerically. A weighmaster shall not use another filing system without Department approval.

Historical Note
New Section R3-7-505 recodified from Section R20-2-505 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-506. Seal of Authority
A. A weighmaster shall obtain a seal for the certification of weight certificates at cost through the Department.
B. The Department shall assign a number to a seal identifying the public weighmaster and the specific location for which the seal is issued.
C. A seal is the property of the state. A weighmaster shall surrender a seal to the Department within 30 days after the weighmaster no longer operates as a licensed public weighmaster.
D. A public weighmaster shall have one seal for use at each scale location.
E. A seal shall be accessible to the weighmaster and authorized deputies during all business hours at the scale location for the timely and proper certification of weight certificates.
F. A public weighmaster shall keep a seal of authority at each scale location and make it available for inspection by the Department during all business hours.

Historical Note
New Section R3-7-506 recodified from Section R20-2-506 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-507. Prohibited Acts
A. A person shall not:
1. Issue a certified weight certificate without being a licensed public weighmaster or a person properly authorized to act for a public weighmaster;
2. Procure, print, or cause to be printed any public weighmaster weight certificate without being a licensed public weighmaster or a person authorized to act for a public weighmaster;
3. Possess unfilled or unused public weighmaster weight certificate forms without being a licensed public weighmaster or a person authorized to act for a public weighmaster;
4. Furnish or give false information to a weighmaster for use in the completion of a weight certificate;
5. Present a certificate for payment falsified by the insertion of any weight, measure, or count not determined by the issuing weighmaster;
6. Use without authorization the title "licensed public weighmaster" or any similar title;
7. Represent oneself to be a public weighmaster without holding a license issued by the Department;
8. Engage in public weighing without holding a valid license as a public weighmaster, or acting under the authority of a licensed public weighmaster;
9. Use an unlicensed scale in the performance of public weighmaster duties; or
10. Operate a scale for public weighing unless that person is licensed as a public weighmaster.

B. People engaged in the business of printing weight certificate forms, their representatives, and the Department are exempt from the prohibitions specified in subsections (A)(2) and (3).

Historical Note
New Section R3-7-507 recodified from Section R20-2-507 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES

R3-7-601. Qualifications; License and Renewal Application Process
A. Registered service agency.
1. To obtain a license as a registered service agency, an applicant shall provide evidence that:
   a. The applicant's registered service representative has a thorough knowledge of all appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter;

b. The applicant provided its representative with a copy of the portions of A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter relating to registered service representative duties;
c. The applicant:
i. Possesses the necessary certified standards and testing equipment to service commercial devices; and
ii. Possesses the necessary test equipment calibrated annually by the equipment manufacturer to perform an air to liquid (A/L) test of a vapor recovery system or vapor recovery component properly; or
iii. Has access to the necessary standards and testing equipment belonging to another registered service agency and has written approval from that agency to use its standards and testing equipment; and
d. The applicant shall ensure that its registered service representative operates the equipment according to A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter.
2. The Department shall not issue a registered service agency license until at least one of the applicant's employees passes a registered service representative competency exam.
3. An applicant for a registered service agency license shall submit an application form, obtained from the Department that provides:
a. Name, address, telephone number, electronic mail address, and facsimile number;
b. License information from other states;
c. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
d. A list of all of the applicant's devices and testing equipment with corresponding serial or identification numbers;
e. Branch office information;
f. Names of registered service representatives and their experience with other registered service agencies or states;
g. License and disciplinary history; and
h. Applicant's signature.

B. Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Department with evidence that the third-party registered service agency:
1. Holds a valid license issued by the Arizona Registrar of Contractors,
2. Complies with workers' compensation insurance laws, and
3. Maintains liability insurance sufficient to cover the value of work to be performed.

C. Registered service representative.
1. To obtain a license as a registered service representative, an applicant shall provide evidence that:
a. The applicant has a thorough knowledge of all appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders, and this Chapter;
b. The applicant possesses the necessary training or experience regarding appropriate standards and testing equipment to service the specific commercial device, vapor recovery system, or vapor recovery system component indicated on the application;
c. The applicant will operate according to appropriate laws within A.R.S. Title 41, Chapter 15, Handbook 44, Handbook 112, CARB Executive Orders; and this Chapter; and
d. The applicant has passed the competency examination specified in subsection (D).
2. An applicant for a registered service representative license shall submit an application on a form obtained from the Department that provides:
a. Name, address, telephone number, and facsimile number;
b. License information from other states;
c. An indication of whether the applicant is applying to be a registered service representative, vapor recovery service representative No. 1, or vapor recovery service representative No. 2;
d. Types of devices serviced, repaired, or installed, or vapor recovery systems or components repaired or tested;
e. Work experience with other registered service agencies in Arizona or other states;
f. License and disciplinary history; and
g. Applicant's signature.
3. An applicant for a vapor recovery registered service representative No. 1 license shall maintain and make available to the Department upon request evidence of being:
a. Certified by the manufacturer to test or repair all vapor recovery systems and components, or
b. Determined qualified by the Department to test or repair all vapor recovery systems and components.

D. Competency examination. Before being issued a registered service representative license, an applicant shall pass a Department-administered competency examination.
1. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.
2. An applicant shall bring a copy of Handbook 44 and Handbook 112 to the examination site.
3. An applicant shall complete the competency examination within the time specified by the Department.
4. The Department shall not allow an applicant to take the competency examination more than two times in six months.

E. As required under A.R.S. § 41-2094(G), the Department shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Department for the registered service representative.

F. Renewal of a registered service representative license. Under A.R.S. § 41-2094(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with R3-7-603(E). Before complying with R3-7-603(E), the registered service agency shall ensure that:
1. A vapor recovery registered service representative No. 1 or 2 completes the Department's training class, and
2. A vapor recovery registered service representative takes and passes the Department's written vapor recovery competency examination as follows:

a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and
b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.

G. The Department does not charge a fee to process a change in business name or address.

Historical Note
New Section R3-7-601 recodified from Section R20-2-601 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-602. Duties

A. Registered service agency.
1. A registered service agency shall:
   a. Maintain all equipment used for commercial device certification according to standards traceable to NIST, and
   b. Maintain and use equipment for testing vapor recovery systems and vapor recovery system components according to this Chapter and manufacturer specifications.
2. When a registered service agency restores or newly places in service a commercial device, the registered service agency shall complete a placed-in-service report form prescribed by the Department.
   a. The registered service agency shall complete the placed-in-service report in triplicate;
   b. Within seven calendar days after the commercial device is restored to service or newly placed in service, the registered service agency shall mail the original of the properly completed and signed placed-in-service report to the Department;
   c. The registered service agency shall give a copy of the placed-in-service report to the person who owns or operates the commercial device;
   d. The registered service agency shall retain a copy of the placed-in-service report or any required vapor recovery report for one year;
   e. The registered service agency shall ensure that the placed-in-service report contains the assigned license number of the registered service representative who completes the report;
   f. The registered service agency shall ensure that the placed-in-service report is completed and signed by the registered service representative noting each rejected commercial device restored to service and each newly installed commercial device placed in service;
   g. The registered service agency shall ensure that the placed-in-service report includes the serial or identification number of each standard used by the registered service representative to calibrate the commercial device for each rejected device restored to service and for each newly installed device placed in service; and
   h. The registered service agency shall ensure that the placed-in-service report includes the license number of the registered service representative who installs or repairs the commercial device.
3. A registered service agency shall have all equipment used for commercial device certification and A/L testing certified annually by the manufacturer.
4. A registered service agency shall not use new equipment for commercial device certification until it is certified by a NIST-traceable laboratory.
5. A registered service agency shall ensure that employees do not perform registered service representative duties until licensed. A registered service agency may train an employee in registered service representative duties only if the employee is within the direct line of sight and hearing of a supervising licensed registered service representative.
6. A registered service agency shall use a form approved by the Department to record vapor recovery test results and violations. The registered service agency shall submit to the Department the summary test report within 24 hours following the test. All other forms relating to the test shall be mailed within seven days after completion of the test.
7. A registered service agency shall ensure that its registered service representative provides a copy of the Regulatory Bill of Rights, defined in A.R.S. § 41-1001.01, to the owner or operator of a vapor recovery system before beginning a vapor recovery test that is not witnessed by the Department.
8. A registered service agency shall ensure that its registered service representative provides a vapor recovery system owner or operator with written test preparation instructions, approved by the Department, at least 10 business days before an initial or annual test.

B. Registered service representative.
1. A registered service representative shall:
   a. Install only commercial devices that meet the requirements of this Chapter;
   b. Perform all vapor recovery tests according to this Chapter;
   c. Perform all appropriate tests when repairing a commercial device or repairing or replacing a vapor recovery system or component to ensure that the requirements of A.R.S. Title 41, Chapter 15, this Chapter, Handbook 44, Handbook 112, and CARB Executive Orders are met;
   d. Report to the user equipment or commercial devices that do not conform to NIST standards; and
   e. Complete placed-in-service reports accurately.
2. If a vapor recovery registered service representative cannot correct a violation and has to leave the vapor recovery site, the registered service representative shall secure the non-compliant vapor recovery system or component from commercial use. The non-compliant system or component shall not be used for commercial purposes until it is repaired and passes the test required by R3-7-910. The registered service representative shall notify the Department of the stop-sale, stop-use by 6:00 a.m. of the day after the non-compliant vapor recovery system or component is secured or one hour before the test, whichever is sooner, so that the Department can witness the test.

Historical Note
New Section R3-7-602 recodified from Section R20-2-602 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-603. Grounds for Denying License or Renewal; Disciplinary Action; and Certification of Standards and Testing Equipment

A. The Department shall not issue a license or renewal until an applicant pays all appropriate fees.

B. Upon receipt and acceptance of all required documents, fees, and Department certification of standards, the Department shall issue the agency a license or renewal.

C. The Department shall include on a license an assigned number, that remains effective until either withdrawn by the Department or until it expires. The Department shall issue a license with the agency's assigned license number to each registered service representative employed by the agency who has passed the competency examination.

D. Neither a registered service agency nor a registered service representative shall transfer a license.

E. A registered service agency shall submit the renewal fee for the agency license and the agency's representatives' licenses by the first day of the month that each license expires.

F. The Department may deny a license or renewal for any of the following reasons:
1. Providing false or misleading information;
2. Failure to meet annual certification requirements for standards or testing equipment;
3. Failure to meet the requirements stated in this Article; or
4. For any reason that would be grounds for suspension, revocation, or refusal to renew.

G. The Department may suspend, revoke, or refuse to renew a license if the applicant is not qualified to perform those duties required or has been found to have violated any provision of A.R.S. Title 41, Chapter 15, or this Chapter.

H. Every registered service agency and representative shall comply with the Department's metrology laboratory annual schedule for certification of field standards contained in A.R.S. § 41-2067(F).

Historical Note

New Section R3-7-603 recodified from Section R20-2-603 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R20-2-604. Prohibited Acts

A. A person shall not:
1. Perform any duty or do any act required to be done by a registered service agency or registered service representative without holding a registered service agency or registered service representative license issued by the Department;
2. Use the title of registered service agency or registered service representative, any similar title, or hold oneself out as a registered service agency or representative without a valid license; or
3. Remove an official out-of-service, warning, or stop-sale, stop-use tag except as authorized in this Chapter, or by the Department.

B. A registered service agency or registered service representative shall not:
1. Fraudulently complete or file a placed-in-service report;
2. Delegate licensed authority or responsibility to an unlicensed person;
3. Perform a function without certified equipment;
4. Install or place in service a commercial device before satisfying all of the statutory and rule requirements;
5. Fail to report a commercial device to the Department within two business days of finding that device is out of compliance;
6. Install, calibrate, or repair a commercial device without placing a sequentially numbered decal or label on the device as prescribed by the Director;
7. Leave a location where there is a non-compliant commercial device without securing the commercial device from commercial use; or
8. Leave a vapor recovery site where there is a non-compliant system or component without securing the system or component from commercial use.

Historical Note

New Section R3-7-604 recodified from Section R20-2-604 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-605. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.
1. California Air Resources Board Executive Order G-70-17-AD, *Modification of Certification of the Emco Wheaton Balance Phase II Vapor Recovery System*, May 6, 1993, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
2. California Air Resources Board Executive Order G-70-36-AD, *Modification of Certification of the OPW Balance Phase II Vapor Recovery System*, September 18, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
3. California Air Resources Board Executive Order G-70-52-AM, *Certification of Components for Red Jacket, Hirt, and Balance Phase II Vapor Recovery Systems*, October 4, 1991, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
4. California Air Resources Board Executive Order G-70-70-AC, *Modification of Certification of the Healy Phase II Vapor Recovery System for Gasoline Dispensing Facilities*, June 23, 1992, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
5. California Air Resources Board Executive Order G-70-150-AE, *Modification to the Certification of the Marconi Commerce Systems Inc. (MCS) "Formerly Gibarco" VaporVac Phase II Vapor Recovery System*, July 12, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
6. California Air Resources Board Executive Order G-70-153-AD, *Modification to the Certification of the Dresser/Wayne WayneVac Phase II Vapor Recovery System*, April 3, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
7. California Air Resources Board Executive Order G-70-154-AA, *Modification to the Certification of the Tokheim MaxVac Phase II Vapor Recovery System*, June 10, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
8. California Air Resources Board Executive Order G-70-163-AA, *Modification to the Certification of the OPW VaporEZ Phase II Vapor Recovery System*, September 4, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
9. California Air Resources Board Executive Order G-70-164-AA, *Modification to Certification of the Hasstech VCP-3A Vacuum Assist Phase II Vapor Recovery System*, December 10, 1996, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
10. California Air Resources Board Executive Order G-70-165, *Certification of the Healy Vacuum Assist Phase II Vapor Recovery System with the Model 600 Nozzle*, April 20, 1995, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
11. California Air Resources Board Executive Order G-70-169-AA, *Modification to the Certification of the Franklin Electric INTELLIVAC Phase II Vapor Recovery System*,

August 11, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

12. California Air Resources Board Executive Order G-70-177-AA, *Modification to the Certification of the Hirt VCS400-7 Vacuum Assist Phase II Vapor Recovery System*, December 9, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
13. California Air Resources Board Executive Order G-70-180, *Order Revoking Certification of Healy Phase II Vapor Recovery Systems for Gasoline Dispensing Facilities*, April 17, 1997, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
14. California Air Resources Board Executive Order G-70-183-AA, *Relating to Language Correction in Existing Executive Order G-70-183 (Healy Systems, Inc.)*, June 29, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
15. California Air Resources Board Executive Order G-70-186, *Certification of the Healy Model 400 ORVR Vapor Recovery System*, October 26, 1998, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
16. California Air Resources Board Executive Order G-70-188, *Certification of the Catlow ICVN Vapor Recovery Nozzle System for use with the Gilbarco VaporVac Vapor Recovery System*, May 18, 1999, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
17. California Air Resources Board Executive Order G-70-191-AA, *Relating to Language Correction in Existing Executive Order G-70-191 (Healy Systems, Inc.)*, July 30, 2001, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.
18. California Air Resources Board Executive Order G-70-196, *Certification of the Saber Technologies, LLC Saber-Vac VR Phase II Vapor Recovery System*, December 30, 2000, California Air Resources Board, P.O. Box 2815, Sacramento, California 95812-2815.

Historical Note

New Section R3-7-605 recodified from Section R20-2-605 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 7. MOTOR FUELS AND PETROLEUM PRODUCTS

R3-7-701. Definitions

In addition to the definitions in R3-7-101, the following definitions apply to this Article unless the context otherwise requires:

"Address" means a street number, street name, city, state, and zip code.

"Area A" has the same meaning as in A.R.S. § 49-541.

"Area B" has the same meaning as in A.R.S. § 49-541.

"Arizona Cleaner Burning Gasoline" or "Arizona CBG" means a gasoline blend that meets the requirements of this Article for gasoline produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles within the CBG-covered area, except as provided under A.R.S. § 41-2124(J).

"AST" means aboveground storage tank.

"AZRBOB" or "Arizona Reformulated Blendstock for Oxygenate Blending" means a combination of gasoline blendstocks that is intended to be or represented to constitute Arizona CBG upon the addition of a specified amount (or range of amounts) of fuel ethanol after the blendstock is supplied from the facility at which it was produced or imported.

"Batch" means a quantity of motor fuel or AZRBOB that is homogeneous for motor fuel properties specific for the motor fuel standards applicable to that motor fuel or AZRBOB.

"Beginning of transport" means the point at which:

A registered supplier relinquishes custody of Arizona CBG or AZRBOB to a transporter or third-party terminal; or

A registered supplier that retains custody of Arizona CBG or AZRBOB begins transfer of the Arizona CBG or AZRBOB into a vessel, tanker, or other container for transport to the CBG-covered area.

"Biodiesel" means a diesel fuel substitute that is produced from nonpetroleum renewable resources as defined by the United States environmental protection agency and meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency pursuant to § 211 of the clean air act as defined in section 49-401.01. A.R.S. § 41-2051

"Biodiesel blend" means a motor fuel that is comprised of biodiesel and diesel fuel and that is designated by the letter "B," followed by the numeric value of the volume percentage of biodiesel in the blend. A.R.S. § 41-2051

"Biodiesel (mono-alkyl ester)" means a biodiesel or fuel additive that:

Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,

Is a mono-alkyl ester,

Meets the standards in ASTM D6751,

Is intended for use in some engines designed to run on conventional diesel fuel, and

Is derived from nonpetroleum renewable resources.

"Biodiesel (mono-alkyl ester) blend" means a motor fuel composed of biodiesel (mono-alkyl ester) and diesel fuel and identified by the letter "B" and a numeric value indicating the volume percentage of biodiesel (mono-alkyl ester) in the blend.

"Biofuel" means a solid, liquid, or gaseous fuel that is derived from biomass or nonpetroleum renewable resources and can be used directly for heating or power or as a motor fuel.

"Biofuel blend" means a motor fuel composed of biofuel and petroleum-based motor fuel and identified by the letter "C" and a numeric value indicating the volume percentage of biofuel in the blend.

"Biomass" means biological material, such as animal or plant matter, that can be transformed into biofuel, excluding biological material that has been transformed by geological processes into a substance such as coal petroleum or a derivative of a substance resulting from geological processes.

"Blendstock" means any liquid compound that is blended with another liquid compound to produce a motor fuel, including Arizona CBG. A deposit-control or similar additive registered under 40 CFR 79 is not a blendstock.

"BQ9000" means the cooperative and voluntary program, implemented by the National Biodiesel Accreditation Commission, to accredit producers and marketers of biodiesel fuel

using a combination of the ASTM standard for biodiesel (ASTM D6751) and a quality systems program of fuel management practices regarding storing, sampling, testing, blending, shipping, and distributing biodiesel fuel.

"CARB" means the California Air Resources Board.

"CARBOB Model" means the procedures incorporated by reference in R3-7-702(11).

"CARB Phase 2 gasoline" means gasoline that meets the specifications incorporated by reference in R3-7-702(8).

"CBG-covered area" means a county with a population of 1,200,000 or more persons according to the most recent United States decennial census and any portion of a county within area A.

"Conventional gasoline" means gasoline that conforms to the requirements of this Chapter for sale or use in Arizona, but does not meet the requirements of Arizona CBG or AZRBOB.

"Diesel" or "diesel fuel" *means a refined middle distillate that is used as a fuel in a compression-ignition internal combustion engine and that meets the specifications of ASTM D975.* A.R.S. § 41-2051

"Duplicate" means a portion of a sample that is treated the same as the original sample to determine the accuracy and precision of an analytical method.

"E85" means a fuel ethanol gasoline blend that meets the specifications in ASTM D5798, which is incorporated by reference in R3-7-702.

"EPA" means the United States Environmental Protection Agency.

"EPA waiver" means a waiver granted by the Environmental Protection Agency as described in "Waiver Requests under Section 211(f) of the Clean Air Act," which is incorporated by reference in R3-7-702.

"Final destination" means the name and address of the location to which a transferee will deliver motor fuel for further distribution or final consumption.

"Final distribution facility" means a stationary motor-fuel transfer point at which motor fuel or AZRBOB is transferred into a cargo tank truck, pipeline, or other delivery vessel from which the motor fuel or AZRBOB will be delivered to a motor-fuel dispensing site. A cargo tank truck is a final distribution facility if the cargo tank truck transports motor fuel or AZRBOB and carries documentation that the type and amount or range of amounts of oxygenates designated by the registered supplier will be or have been blended directly into the cargo tank truck before delivery of the resulting motor fuel to a motor-fuel dispensing site.

"Fleet" means at least 25 motor vehicles owned or leased by the same person.

"Fleet vehicle fueling facility" means a facility or location where a motor fuel is dispensed for final use by a fleet.

"Fuel ethanol" means denatured ethanol that meets the specifications in ASTM D4806, which is incorporated by reference in R3-7-702.

"Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than .05 grams of lead for each United States gallon, is produced, refined, manufactured, blended, distilled, or compounded from petroleum, natural gas, oil, shale oils or coal, and other flammable liquids free from undissolved water, sediment, or suspended matter, with or without additives, and is commonly used as a fuel for spark-ignition internal-combustion engines. Gasoline does not include diesel fuel or E85.

"Jobber" means a person that distributes a motor fuel from a bulk storage plant to the owner or operator of a UST or AST or purchases a motor fuel from a terminal for distribution to the owner or operator of a UST or AST.

"Manufacturer's proving ground" means a facility used only to develop complete motor vehicles, which are not currently available on the retail market, for an automotive manufacturer.

"Marketer" means a person engaged in selling or offering for sale motor fuels.

"Motor fuel" means a petroleum or a petroleum based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and the ethanol blend E85 as defined in ASTM D5798. A.R.S. § 41-2051

"Motor fuel dispensing site" means a facility or location where a motor fuel is dispensed into commerce for final use.

"Motor fuel property" means any characteristic listed in R3-7-751(A)(1) through (7), R3-7-751(B)(1) through (7), Table 1, Table 2, or any other motor fuel standard referenced in this Article.

"Motor vehicle" means a vehicle equipped with a spark-ignited or compression-ignition internal combustion engine except:

A vehicle that runs on or is guided by rails, or

A vehicle designed primarily for travel through air or water.

"Motor vehicle racing event" means a competition, including related practice and qualifying and demonstration laps that uses unlicensed motor vehicles designed and manufactured specifically for racing and is conducted on a public or private racecourse for the entertainment of the general public.

"MTBE" means methyl tertiary butyl ether.

"Neat" means pure or 100 percent; not blended with motor fuel.

"NOx" means oxides of nitrogen.

"Octane," "octane number," or "octane rating" mean the anti-knock characteristic of gasoline as determined by the resultant arithmetic test average of ASTM D2699 and ASTM D2700.

"Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and is approved as a blending agent under the provisions of a waiver issued by the United State environmental protection agency pursuant to 42 United States Code §7545(f). A.R.S. § 41-2121

"Oxygenate blender" means a person that owns, leases, operates, controls, or supervises an oxygenate-blending facility, or that owns or controls the blendstock or gasoline used, or the gasoline produced, at an oxygenate-blending facility.

"Oxygen content" means the percentage by weight of oxygen contained in a gasoline oxygenate blend as determined under ASTM D4815.

"Petroleum-based renewable diesel" means diesel fuel or fuel additive that meets all of the following:

Is registered as a motor vehicle fuel or fuel additive under 40 CFR 79,

Is not a mono-alkyl ester,

Is intended for use in engines designed to run on diesel fuel,

Is derived from petroleum and nonpetroleum renewable resources,

Meets the requirements of ASTM D975, and

Is identified by the letter "R" and a numeric value indicating the volume percentage of the nonpetroleum renewable resources component in the blend.

"Pipeline" means a transporter that owns or operates an interstate common-carrier pipe or is subject to Federal Energy Regulatory Commission tariffs to transport motor fuels into Arizona.

"Pressurant" means a blendstock component of an E85 blend for sale within the CBG-covered area added specifically to ensure that the vapor pressure meets ASTM D5798 requirements.

"Producer" means a refiner, blender, or other person that produces a motor fuel, including Arizona CBG or AZRBOB.

"Production facility" means a facility at which a motor fuel, including Arizona CBG or AZRBOB, is produced. Upon request of a producer, the Director may designate, as part of the producer's production facility, a physically separate bulk storage facility that:

Is owned or leased by the producer;

Is operated by or at the direction of the producer; and

Is used to store or distribute motor fuels, including Arizona CBG or AZRBOB, that are supplied only from the production facility.

"Product transfer document" means a bill of lading, loading ticket, manifest, delivery receipt, invoice, or other paper that is provided by the transferor at the time motor fuel is delivered and evidences that custody or title of the motor fuel is transferred to the transferee. A product transfer document is not required when motor fuel is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility.

"Refiner" means a person that owns, leases, operates, controls, or supervises a refinery in the United States, including its trust territories.

"Refinery" means a facility that produces a liquid fuel, including Arizona CBG or AZRBOB, by distilling petroleum, or a transmix facility that produces a motor fuel offered for sale or sold into commerce as a finished motor fuel.

"Reproducibility" means the testing method margin of error as provided in the ASTM specification or other testing method required under this Article.

"Supplier" means a marketer or jobber of a biofuel or biofuel blend.

"Supply" means to provide or transfer motor fuel to a physically separate facility, vehicle, or transportation system.

"Terminal" means an owner or operator of a motor fuel storage tank facility that accepts custody, but not ownership, of a motor fuel from a registered supplier, oxygenate blender, pipeline, or other terminal and relinquishes custody of the motor fuel to a transporter.

"Test result" means any document that contains a result of testing including all original test measures, all subsequent test measures that are not identical to the original test measure, and all worksheets on which calculations are performed.

"Transferee" means a person that receives title to or custody of a motor fuel.

"Transferor" means a person that relinquishes title to or custody of a motor fuel to a transporter, marketer, jobber, or motor fuel dispensing site.

"Transmix" means a mixture of petroleum distillate fuel and gasoline that does not meet the Arizona standards for either petroleum distillate fuels or gasoline.

"Transmix facility" means a facility at which transmix is processed into its components and then the components either are combined with a finished product or further processed to produce a finished motor fuel.

"Transporter" means a person that causes motor fuels, including Arizona CBG or AZRBOB, to be transported into or within Arizona.

"UST" means underground storage tank.

"Vapor pressure" means dry vapor pressure equivalent of gasoline or blendstock as measured according to ASTM D5191.

"Vehicle emissions control area" has the same meaning as in A.R.S. § 49-541 except that a vehicle emissions control area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

"VOC" means volatile organic compound.

Historical Note

New Section R3-7-701 recodified from Section R20-2-701 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-702. Material Incorporated by Reference

A. The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no future editions or amendments.

1. 16 CFR 306 - Automotive Fuel Ratings, Certification and Posting, January 1, 1998 Edition, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.
2. ASTM Standard D975, 2010 (ASTM D975-10), "Standard Specification for Diesel Fuel Oils," published April 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
3. ASTM Standard D4806, 2009 (ASTM D4806-09), "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel," published July 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
4. ASTM Standard D4814, 2009b (ASTM D4814-09b), "Standard Specification for Automotive Spark-Ignition Engine Fuel," published September 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

5. Waiver Requests under Section 211(f) of the Clean Air Act, (August 22, 1995 edition), United States Environmental Protection Agency, Transportation and Regional Programs Division, Fuels Program Support Group, Mail Code 6406-J, Washington, D.C. 20460.
6. ASTM Standard D5798, 2009b (ASTM D5798-09b), "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines," published May 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
7. ASTM Standard D6751, 2009a (ASTM D6751-09a), "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels," published February 2010, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.
8. California Air Resources Board, "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," adopted April 20, 1995. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
9. The Federal Complex Model as contained in 40 CFR 80.45, January 1, 1999. A copy may be obtained at: Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov.
10. California Air Resources Board, The California Reformulated Gasoline Regulations, Title 13, California Code of Regulations, Section 2266.5 (Requirements Pertaining to California Reformulated Gasoline Blendstock for Oxygen Blending (CARBOB) and Downstream Blending), as of April 9, 2005. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
11. California Air Resources Board, Procedures for Using the California Model for California Reformulated Gasoline Blendstocks for Oxygenate Blending (CARBOB), adopted April 25, 2001. A copy may be obtained at: CARB, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.
12. ASTM Standard D7467, 2009a (ASTM D7467-09a), "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)," published June 2009, ASTM International (formerly American Society for Testing and Materials), 100 Barr Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org.

B. Subsection (A)(11) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

Historical Note

New Section R3-7-702 recodified from Section R20-2-702 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-703. Volumetric Inspection of Motor Fuels and Motor Fuel Dispensers

A. After completing an inspection, the Department shall return all motor fuel to the owner or operator of the service station at the site where the Department collected the motor fuel.

B. After completing an inspection, if a motor fuel cannot be returned to the owner or operator of the service station at the site where the Department collected the motor fuel, the Department shall transport the motor fuel to another site of the owner or operator's choice and within a 20-mile radius of the inspection site.

Historical Note

New Section R3-7-703 recodified from Section R20-2-703 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-704. Price and Grade Posting on External Signs

A. A person who owns or operates a service station that has an external sign shall ensure that the sign:
1. Identifies whether the price differs depending on whether the payment is cash, credit, or debit;
2. Identifies the self-service and full-service prices, if different;
3. Discloses the full price of motor fuel including fractions of a cent and all federal and state taxes, if the sign displays the motor fuel price. A decimal point shall be used in the displayed price when a dollar sign precedes the posted price;
4. Displays lettering at a height of at least 1/5 of the letter height of the motor fuel price displayed on the external sign or 2 1/2", whichever is larger, and is visible from the road;
5. States the terms of any condition if the displayed price is conditional upon the sale of another product or service. The terms of any condition shall comply with the letter height requirement in subsection (A)(4);
6. Describes diesel fuel as No. 1 diesel, #1 diesel, No. 2 diesel, #2 diesel, or biodiesel blend; and
7. Identifies the unit of measure of the price, if it is other than per gallon.

B. If the following terms are used in a sign to describe a gasoline grade or gasoline-oxygenate blend, the grade or blend shall meet the following minimum antiknock index:

	Term	Minimum Antiknock Index
1.	Regular, Reg, Unleaded, UNL, or UL	87
2.	Midgrade, Mid, or Plus	89
3.	Premium, PREM, Super, Supreme, High, or High Performance	91

Historical Note

New Section R3-7-704, including Table, Antiknock Index, recodified from Section R20-2-704 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-705. Price, Octane, and Lead-substitute Notification on Dispensers

A. A service station owner or operator shall ensure that information regarding pricing, motor fuel grade, octane rating, and lead-substitute addition displayed on a service station motor fuel dispenser:
1. Is clean, legible, and visible at all times;
2. Is displayed electronically or with a sign or label on the upper 60 percent of each face of the dispenser;
3. Lists the full price of the motor fuel including fractions of a cent and all federal and state taxes;
4. Displays the highest price of motor fuel sold from the dispenser if the dispenser is capable of dispensing and computing the price of multiple grades of motor fuel;
5. Displays a discount, if offered, in letters at least 1/4" in height on each face of the dispenser and next to the undiscounted price;
6. Displays both a cash and credit price on a dispenser that is capable of electronically displaying both cash and credit prices;

7. Posts both a cash and credit price on each face of a dispenser that is preset by the cashier if the dispenser is unable to display electronically and simultaneously both cash and credit prices;
8. Posts a price-per-gallon sign next to or on a non-price computing dispenser for a retail-only sale of liquefied petroleum gas used as an alternative motor fuel; and
9. Complies with the requirements of R3-7-704(A)(1)(A)(1), (A)(2), (A)(3), (A)(5), (A)(6), and (A)(7).

B. A person who owns or operates a service station shall ensure that:
1. The octane rating of each grade of gasoline is displayed on the upper 60 percent of each face of each dispenser, as prescribed by 16 CFR 306; and
2. The signs required by Handbook 130, for gasoline dispensers that dispense gasoline with lead substitute, are displayed on the upper 60 percent of each face of each dispenser in letters at least 1/4" in height.

Historical Note
New Section R3-7-705 recodified from Section R20-2-705 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-706. Unattended Retail Dispensers
In addition to all labeling and sign requirements in this Article, an owner or operator of an unstaffed service station shall post on or next to each motor fuel dispenser a sign or label, in public view, that conspicuously lists the owner's or operator's name, address, and telephone number.

Historical Note
New Section R3-7-706 recodified from Section R20-2-706 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-707. Product Transfer Documentation and Record Retention for Motor Fuel other than Arizona CBG and AZRBOB

A. When a transferor transfers custody or title to a motor fuel that is not Arizona CBG or AZRBOB, and the motor fuel is not sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following information:
1. The grade of the motor fuel;
2. The volume of each grade of motor fuel being transferred;
3. The date of the transfer;
4. Product transfer document number;
5. For conventional gasoline, the minimum octane rating of each grade;
6. For conventional gasoline, the type and maximum volume of oxygenate contained in each grade;
7. For conventional gasoline transported in or through the CBG-covered area, the statement, "This gasoline is not intended for use inside the CBG-covered area";
8. Whether a lead substitute is present in the gasoline and the type of lead substitute present;
9. For a biofuel or biofuel blend, the percentage of biofuel in the finished product; and
10. The final destination:
    a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address, the transporter name and address, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site;
    b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
    c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(10), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may use standardized product codes on pipeline tickets as the product transfer documentation.

D. A person identified in subsection (A) shall retain product transfer documentation for each shipment delivered for 12 months. This documentation shall be available within two working days from the time of the Department's request.

E. A person identified in subsection (A) shall maintain product transfer documentation for a transfer or delivery during the preceding 30 days at that person's address listed on the product transfer documentation.

F. An owner or operator of a motor fuel dispensing site or fleet owner shall maintain product transfer documentation for the three most recent deliveries of each grade of motor fuel on the premises of the motor fuel dispensing site owner or operator or fleet owner. This documentation shall be available for Department review.

G. The Department shall accept a legible photocopy of a product transfer document instead of the original.

H. A person transferring custody or title of Arizona CBG or AZRBOB shall comply with R3-7-757.

Historical Note
New Section R3-7-707 recodified from Section R20-2-707 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-708. Gasoline Ethanol Blends

A. A person that has custody of gasoline blended with an oxygenate shall ensure that the amount of oxygenate does not exceed the amount allowed by EPA waivers, Section 211(f) of the Clean Air Act, and A.R.S. § 41-2122. The maximum oxygen content of gasoline oxygenate blends shall not exceed 4.0 percent by weight for fuel ethanol oxygenate and as specified in A.R.S. § 41-2122 for other oxygenates.

B. Special provisions for gasoline ethanol blends.
1. A gasoline ethanol blend that meets the requirements in subsections (B)(1)(a) and (b) shall not exceed the vapor pressure specified in ASTM D4814 by more than 1 psi:
    a. The gasoline ethanol blend shall contain fuel ethanol. The concentration of the fuel ethanol, excluding the required denaturing agent, shall be:
        i. From May 1 through September 15, at least nine percent and no more than 10 percent by volume of the gasoline ethanol blend; and
        ii. From September 16 through April 30, at least 1.5 percent by weight and no more than 10 percent by volume of the gasoline ethanol blend; and
    b. The fuel ethanol content of the gasoline ethanol blend shall:

i. Be determined using the appropriate test method listed in ASTM D4814, and
ii. Not exceed any applicable waiver condition under Section 211(f) of the Clean Air Act.

2. The provision in subsection (B)(1) is effective for gasoline ethanol blends sold:
   a. Outside the CBG-covered area year around, and
   b. Within the CBG-covered area during April.
3. Gasoline blended with no more than 10 percent by volume of fuel ethanol shall be blended using one of the following alternatives:
   a. The base gasoline complies with the standards in ASTM D4814, the fuel ethanol complies with the standards in ASTM D4806, and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ratio is equal to 20 is waived;
   b. The finished blend complies with the standards in ASTM D4814; or
   c. The base gasoline complies with the standards in ASTM D4814 except distillation and the finished blend complies with the standards in ASTM D4814 with the following permissible exceptions:
      i. The distillation minimum temperature at the 50 volume percent evaporated point is not less than 66°C (150°F), and
      ii. The minimum test temperature at which the vapor/liquid ration is equal to 20 is waived.
4. A gasoline ethanol blend shall meet the standards specified in ASTM D4814.

C. In addition to complying with the requirements in R3-7-707, the transferor of a gasoline ethanol blend shall ensure that the product transfer document contains a legible and conspicuous statement that the gasoline being transferred contains fuel ethanol and the percentage concentration of fuel ethanol.

Historical Note
New Section R3-7-708 recodified from Section R20-2-708 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-709. Retail Oxygenated Fuel Labeling

A. The owner or operator of a motor fuel dispensing site shall ensure that a motor fuel dispenser that offers gasoline containing fuel ethanol that results in a gasoline blend containing 1.5 percent or more by weight of oxygen is clearly labeled with the fuel ethanol volume information. Each face of each motor fuel dispenser shall be clearly labeled with the oxygenate volume information if the percent by volume is more than 4.3 percent by volume of fuel ethanol.

B. The owner or operator of a motor fuel dispensing site shall ensure that labels required under subsection (A) are displayed on the upper 60 percent of each face of each motor fuel dispenser. The label indicating the maximum percent by volume of oxygenate contained in the oxygenated fuel shall state: "May contain up to _____ % fuel ethanol."

C. In the CBG-covered area and area B, the owner or operator of a motor fuel dispensing site shall ensure that a label displayed on each face of each motor fuel dispenser contains the following statement: "This gasoline is oxygenated with fuel ethanol and will reduce carbon monoxide emissions from motor vehicles." The statement may be printed on the label required in subsection (B) or on a separate label. If the statement is printed on a separate label, the label shall be displayed next to the label required in subsection (B).

D. The owner or operator of a motor fuel dispensing site shall ensure that:
1. The label required by subsection (B) is clean, legible, and visible at all times;
2. The label is printed in black or white block letters on a sharply contrasting background; and
3. The lettering on labels required by subsections (B) and (C) is no less than 1/4".

Historical Note
New Section R3-7-709 recodified from Section R20-2-709 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-710. Blending Requirements

A. A person that has custody of or transports an oxygenated gasoline blend shall ensure that no neat oxygenate blending occurs at a motor fuel dispensing site or fleet vehicle fueling facility.

B. If a motor fuel dispensing site storage tank contains an oxygenated gasoline blend that does not contain the amount of oxygen required by A.R.S. §§ 41-2122, 41-2123, 41-2125, or R3-7-751, the owner or operator of the motor fuel dispensing site shall do one of the following:
1. Add gasoline that contains no more than 20 percent by volume of the same oxygenate to the non-compliant oxygenated gasoline blend;
2. Add a gasoline blend that dilutes the non-compliant oxygenated gasoline blend to the level of oxygen content required by A.R.S. §§ 41-2122, 41-2123, 41-2125, or R3-7-751; or
3. Empty the storage tank and replace the non-compliant oxygenated gasoline blend with a required oxygenate blend.

Historical Note
New Section R3-7-710 recodified from Section R20-2-710 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-711. Alcohol-oxygenated Gasoline Storage Tank Requirements

A. Before a person adds an alcohol-oxygenated gasoline into a storage tank, the person shall:
1. Test the storage tank for the presence of water and, if any water is detected, remove the water from the storage tank; and
2. Install a fuel filter designed for use with alcohol-oxygenated gasoline in the fuel line of all motor fuel dispensers that dispense alcohol-oxygenated gasoline.

B. If water is detected in a storage tank or in an alcohol-oxygenated gasoline in a storage tank, the owner or operator shall empty the storage tank.

Historical Note
New Section R3-7-711 recodified from Section R20-2-711 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-712. Water in Service Station Motor Fuel Storage Tanks

A service station owner or operator shall ensure that water in a service station motor fuel storage tank other than an alcohol gasoline blend, does not exceed 1" in depth when measured from the bottom through the fill pipe. The service station owner or operator shall remove all water from the tank before delivery or sale of motor fuel from that tank.

Historical Note
New Section R3-7-712 recodified from Section R20-2-712 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-713. Motor Fuel Storage Tank Labeling

A. An owner or operator of a motor fuel dispensing site shall ensure that all motor fuel storage tank fill pipes and gasoline vapor return lines located at the motor fuel dispensing site are labeled to identify the contents accurately as:
1. Unleaded gasoline,
2. Unleaded midgrade gasoline,
3. Unleaded premium gasoline,
4. No. 1 or #1 diesel fuel,
5. No. 2 or #2 diesel fuel,
6. Gasoline vapor return,
7. Biodiesel blend, or
8. E85.

B. An owner or operator of a motor fuel dispensing site shall ensure that the label required under subsection (A) is at least 1 1/2" x 5" with at least 1/4" black or white block lettering on a sharply contrasting background and that the label is clean, visible, and legible at all times.

C. An owner or operator of a motor fuel dispensing site may display other information on the reverse side of a two-sided label.

D. An owner or operator of a motor fuel dispensing site shall not put motor fuel into storage tanks without attaching the proper label.

Historical Note
New Section R3-7-713 recodified from Section R20-2-713 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-714. Requirements for Motor Fuels Other than Arizona CBG

A. A person that owns or operates a motor fuel dispensing site or transmix or production facility outside the CBG-covered area shall ensure that a motor fuel offered for sale at the motor fuel dispensing site or transmix or production facility meets all the appropriate specifications in R3-7-702 except that from May 1 through September 30, gasoline shall meet the specifications in ASTM D4814 except maximum vapor pressure shall be 9.0 pounds per square inch.

B. The owner or operator of a motor fuel dispensing site shall ensure that the finished gasoline is visually free of water, sediment, and suspended matter and is clear and bright at ambient temperature or 70° F (21° C), whichever is greater.

C. The owner or operator of a motor fuel dispensing site or transmix or production facility shall ensure that the minimum octane rating determined by the test average of ASTM D 2699 and ASTM D 2700, also known as the (R+M)/2 method, is:
1. 87 for unleaded or regular;
2. 88 for mid-grade, extra, or any other gasoline with an octane rating of 88 or higher; and
3. 90 for super, high performance, premium, or any other gasoline with an octane rating of 90 or higher.

D. Prohibited activities regarding a motor fuel sold or offered for sale outside the CBG-covered area.
1. The owner or operator of a motor fuel dispensing site shall not sell or offer for sale from the motor fuel dispensing site storage tank a product that is not a motor fuel;
2. The owner or operator of a motor fuel dispensing site or transmix or production facility shall not sell or offer for sale a motor fuel that contains more than 0.3 volume percent MTBE or more than 0.1 weight percent oxygen from all other ethers or alcohols as listed in A.R.S. § 41-2122.
3. A transporter shall not deliver to a motor fuel dispensing site or place in a motor fuel dispensing site storage tank a product that is not motor fuel.

Historical Note
New Section R3-7-714 recodified from Section R20-2-714 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-715. Motor Fuel Quality Testing Methods and Requirements

A. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, the producer of a motor fuel shall test the motor fuel for its motor fuel properties using the methodologies in R3-7-702 and ensure that the motor fuel meets the applicable specifications in the material incorporated by reference in R3-7-702.

B. Unless otherwise required in A.R.S. Title 41, Chapter 15, or this Chapter, a person testing #1 or #2 diesel fuel shall use the methodologies and meet the specifications of ASTM D975.

C. The owner or operator of a transmix or production facility shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating determined and certified in accordance with 16 CFR 306 using the average of ASTM D2699 and ASTM D2700, also known as the (R+M)/2 method. The owner or operator of a motor fuel dispensing site shall ensure that all gasoline sold or offered for sale outside the CBG-covered area has its octane rating posted in accordance with 16 CFR 306.

Historical Note
New Section R3-7-715 recodified from Section R20-2-715 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-716. Sampling and Access to Records

A. The Department shall obtain motor fuel samples for testing from:
1. The same motor fuel dispenser used for sales to customers;
2. The same motor fuel dispenser used for dispensing motor fuel into fleet vehicles;
3. A bulk storage facility;
4. A pipeline having custody of motor fuel, including Arizona CBG or AZRBOB;
5. A transporter of motor fuel, including Arizona CBG or AZRBOB;
6. A final distribution facility;
7. A third-party terminal having custody of motor fuel, including Arizona CBG or AZRBOB;
8. An oxygenate blender or registered supplier; or
9. A transmix or production facility.

B. An owner or operator of a motor fuel dispensing site, pipeline, third-party terminal, or storage, transmix, production, or distribution facility, or a transporter, registered supplier, or oxygenate blender shall maintain for five years records relating to producing, importing, blending, transporting, distributing, delivering, testing, or storing motor fuels, including Arizona CBG or AZRBOB, and shall make the records available for Department inspection upon request.

Historical Note
New Section R3-7-716 recodified from Section R20-2-716 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-717. Hold-open Latch Exception

If an owner or operator of a motor fuel dispensing site has a motor fuel nozzle equipped with a hold-open latch, the owner or operator

shall ensure that the latch operates according to the manufacturer's specifications.

Historical Note
New Section R3-7-717 recodified from Section R20-2-717 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-718. Requirements for Production, Transport, Distribution, and Sale of Biofuels

A. General requirements for producers and suppliers of biofuel or biofuel blends in Arizona.
1. Registration requirement.
   a. A producer, supplier, or person required to register with the EPA under 40 CFR 80, Subpart K or M, shall register with the Director, using a form prescribed by the Director, before producing or supplying biofuel or biofuel blend in Arizona.
   b. A person required to register under subsection (A)(1)(a) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (A)(1)(a).
   c. Consequences of failing to register under subsection (A)(1)(a).
      i. If a producer fails to register, the Department shall presume that all biofuel or biofuel blend produced is noncompliant with the requirements of this Chapter from the date that registration should have occurred; and
      ii. If a supplier or person required to register with the EPA fails to register, the Director shall take action as allowed under A.R.S. § 41-2115 and R3-7-762.
   d. The Department shall maintain and make available to the public a list of all persons registered under this Section.
2. Reporting requirement.
   a. A person required to register under subsection (A)(1)(a) shall report to the Department by the 15th of the month after producing or supplying biofuel or biofuel blend. The person shall:
      i. Report on a form prescribed by the Director;
      ii. Provide the information specified in subsections (B) and (C), as applicable;
      iii. Attest to the truthfulness and accuracy of the information submitted;
      iv. Consent to the Department or its authorized agent collecting samples and accessing records as provided in this Article; and
      v. Ensure that the report form is signed by a corporate officer responsible for operations at the facility at or from which the biofuel or biofuel blend was produced or supplied.
   b. The Department shall classify the information submitted under subsection (A)(2)(a) as confidential and protected under A.R.S. § 44-1374 if the person that submits the information expressly designates the information as confidential.
3. Quality Assurance and Quality Control (QA/QC) program requirement.
   a. A person required to register under subsection (A)(1)(a) shall develop a QA/QC program to ensure the quality of a biofuel or biofuel blend produced in or supplied in or into Arizona.
   b. A person required to develop a QA/QC program under subsection (A)(3)(a) shall summarize the QA/QC program in a manual and submit the manual to the Director for approval at least three months before the person plans to produce or supply a biofuel or biofuel blend. The person shall ensure that the manual:
      i. Documents the manner in which the QA/QC program ensures that a biofuel or biofuel blend produced or supplied conforms to applicable ASTM specifications, is appropriately blended, and meets all customer-specific requirements;
      ii. Contains a policy and objectives that expressly commit the producer or supplier to ensure the quality of the biofuel or biofuel blend produced or supplied;
      iii. Contains procedures that will be used to determine and document that operational quality requirements are met; and
      iv. Contains a provision for making, maintaining, and controlling documents and records regarding the QA/QC program.
   c. A person that submits a manual under subsection (A)(3)(b) shall not produce or supply a biofuel or biofuel blend until the manual is approved by the Director.
   d. The Director shall approve a manual submitted under subsection (A)(3)(b) only if the Director determines that the QA/QC program sufficiently ensures the quality of a biofuel or biofuel blend produced or supplied.

B. Specific requirements for producers or suppliers of E85.
1. The owner or operator of a motor fuel dispensing site at which E85 is dispensed shall ensure that:
   a. Both the motor fuel dispenser and nozzle from which E85 is dispensed have labels affixed that:
      i. Indicate E85 is not gasoline,
      ii. Indicate E85 is intended for use only in a flexible-fuel vehicle, and
      iii. State "Check your owner's manual to ensure that this fuel can be used in your vehicle," and
   b. Any motor fuel dispenser from which E85 is dispensed is compatible with E85 and meets the requirements of this Chapter and A.R.S. § 41-2083.
2. Additional requirement for producing E85 for sale in the CBG-covered area. A producer of E85 for sale in the CBG-covered area shall:
   a. Use Arizona CBG or AZRBOB and pressurant as needed to meet the hydrocarbon requirement of ASTM D5798; and
   b. Ensure that the fuel ethanol used meets the standards in this Chapter.
3. Reporting requirement for a producer of E85. A producer of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the E85 produced:
   a. The amount of fuel ethanol used to produce E85 in the previous month,
   b. The amount of gasoline used to produce E85 in the previous month,
   c. The total amount of E85 produced during the previous month,
   d. The following fuel quality properties for the finished E85:
      i. Appearance,
      ii. American Petroleum Institute gravity,
      iii. Organic chloride,
      iv. Water content,

v. Vapor pressure, and
vi. Sulfur content.

4. Reporting requirement for a supplier of E85. A supplier of E85 intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
   a. The amount of E85 sold during the previous month; and
   b. A certification by the supplier of E85 that the E85 sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
5. Quality Assurance and Quality Control (QA/QC) program for a producer of E85. A producer of E85 shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which E85 is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:
   a. All samples of E85 are collected after any applicable blend component is added,
   b. All samples of E85 are collected using approved ASTM methods,
   c. Sampling is done at one of the following rates:
      i. If E85 is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
      ii. If E85 is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 500 times E85 is blended or transferred or one sample per week, whichever is more frequent;
      iii. If E85 is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 250 times E85 is blended or transferred or two samples per week, whichever is more frequent;
   d. All testing of E85 is conducted using the appropriate ASTM test method outlined in ASTM D5798,
   e. Test results are used to certify the quality of the E85 produced,
   f. Sample handling and storage procedures are specified, and
   g. Sample retention time-frames are specified.
6. Non-compliant E85. If test results for E85 shipped from a facility indicate that the E85 does not comply with the requirements of this Chapter, the producer of the E85 shall immediately:
   a. Notify the Director of the test results,
   b. Take all reasonable steps to stop the sale of the noncompliant E85, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

C. Specific requirements for producers or suppliers of biodiesel and biodiesel blends.

1. A person shall not sell or offer or expose for sale:
   a. Neat biodiesel unless the neat biodiesel meets all specifications established by ASTM D6751,
   b. Diesel fuel containing up to five percent by volume biodiesel unless the diesel fuel meets all specifications established by ASTM D975, and
   c. A blend containing six percent through 20 percent biodiesel and diesel fuel unless the blend meets all specifications established by ASTM D7467.
2. The owner or operator of a motor fuel dispensing site shall ensure that:
   a. Any motor fuel dispenser from which a biodiesel or biodiesel blend is dispensed:
      i. Meets the labeling requirements established by A.R.S. § 41-2083(L),
      ii. Is compatible with biodiesel or biodiesel blend, and
      iii. Meets all requirements in this Chapter and A.R.S. § 41-2083; and
   b. Any biodiesel or biodiesel blend sold, offered for sale, or dispensed was received from or traceable to a person registered with the Department under subsection (A)(1).
3. Additional requirement for producing biodiesel or biodiesel blend for sale in the CBG-covered area. A producer of biodiesel or biodiesel blend for sale in the CBG-covered area shall ensure that the diesel fuel used contains no more than 15 ppm of sulfur.
4. Reporting requirement for a producer of a biodiesel or biodiesel blend. A producer of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following information regarding the biodiesel or biodiesel blend produced:
   a. The total amount of biodiesel or biodiesel blend produced in the previous month;
   b. The amount of biodiesel used to produce a biodiesel blend in the previous month;
   c. The following fuel quality properties, established by ASTM D6751, for the finished biodiesel:
      i. Flash point;
      ii. Water sediment;
      iii. Sulfur content,
      iv. Cold soak filterability;
      v. Cloud point;
      vi. Acid number;
      vii. Free glycerin;
      viii. Total glycerin; and
      ix. Distillation, 90 percent; and
   d. The following fuel quality properties, established by ASTM D7467, for the finished biodiesel blend that contains six percent through 20 percent biodiesel:
      i. Sulfur content,
      ii. Aromatic hydrocarbon content,
      iii. Cetane index,
      iv. Acid number,
      v. Distillation, and
      vi. American Petroleum Institute gravity.
5. Reporting requirement for a supplier of a biodiesel or biodiesel blend. A supplier of a biodiesel or biodiesel blend intended as a final product for the fueling of motor vehicles shall submit the report required under subsection (A)(2) and ensure that the report includes the following:
   a. The amount of biodiesel or biodiesel blend sold during the previous month; and
   b. A certification by the supplier of biodiesel or biodiesel blend that the biodiesel or biodiesel blend sold, offered for sale, or dispensed was received

from or traceable to a person registered with the Department under subsection (A)(1).

6. Quality Assurance and Quality Control (QA/QC) program for a producer of biodiesel or a biodiesel blend. Except as specified in subsection (C)(7), a producer of biodiesel or a biodiesel blend shall comply with the QA/QC requirements specified in subsection (A)(3). Additionally, the producer shall ensure that the manual submitted to the Director under subsection (A)(3)(b) contains a description of a QA/QC sampling and testing protocol to be implemented at each facility within the person's operation at which biodiesel or a biodiesel blend is produced. The producer shall ensure that the sampling and testing protocol meets the following minimum standards:
   a. All samples of biodiesel or biodiesel blend are collected after any applicable blend component is added;
   b. All samples of biodiesel or biodiesel blend are collected using approved ASTM methods;
   c. Sampling is done at one of the following rates:
      i. If biodiesel or a biodiesel blend is produced in a single storage tank by batch, a rate of at least one sample per tank. For the purpose of this subsection, a storage tank is a stationary tank and does not include a transport trailer;
      ii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck through the use of computer-controlled in-line blending equipment, a rate of at least one sample for every 20 times biodiesel or biodiesel blend is blended or transferred or one sample every two weeks, whichever is more frequent;
      iii. If biodiesel or a biodiesel blend is blended or transferred into a delivery truck without the use of computer-controlled in-line blending equipment, a rate of at least one sample every 10 times biodiesel or biodiesel blend is blended or transferred or one sample per week, whichever is more frequent;
   d. All testing of biodiesel or biodiesel blend is conducted using the appropriate ASTM test method outlined in ASTM D6751, D975, or D7467;
   e. Test results are used to certify the quality of the biodiesel or biodiesel blend produced;
   f. Sample handling and storage procedures are specified; and
   g. Sample retention time-frames are specified.
7. A producer of biodiesel or a biodiesel blend that is accredited under the BQ9000 program shall, at least three months before planning to produce or supply a biodiesel or biodiesel blend, submit to the Director the quality manual developed and implemented under the BQ9000 program instead of the QA/QC manual required under subsection (C)(6). A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall not produce or supply a biodiesel or biodiesel blend until the quality manual developed under the BQ9000 program is approved by the Director. A producer of biodiesel or a biodiesel blend that is BQ9000 accredited shall, upon request, provide the Director with access to records relating to the accreditation and documentation relating to the precision and accuracy of any alternative test method used to meet the requirements of this Section. The Director has authority under A.R.S. §§ 41-2065(A)(4) and 41-2083(N) to audit the quality manual submitted under this subsection.
8. Non-compliant biodiesel or biodiesel blend. If test results for biodiesel or a biodiesel blend shipped from a facility indicate that the biodiesel or biodiesel blend does not comply with the requirements of this Chapter, the producer of the biodiesel or biodiesel blend shall immediately:
   a. Notify the Director of the test results,
   b. Take all reasonable steps to stop the sale of the noncompliant biodiesel or biodiesel blend, and
   c. Take steps reasonably calculated to determine the cause of the noncompliance and to prevent future occurrences of noncompliance.

D. Specific requirements for producers or suppliers of petroleum-based renewable diesel. A producer or supplier of petroleum-based renewable diesel that is intended as a final product for the fueling of motor vehicles shall ensure that the petroleum-based renewable diesel:
1. Meets the standards in ASTM D975, and
2. Is identified as specified in R3-7-701.

Historical Note
New Section R3-7-718 recodified from Section R20-2-718 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-719. Repealed

Historical Note
Repealed Section R3-7-719 recodified from repealed Section R20-2-719 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-720. Renumbered

Historical Note
Renumbered Section R3-7-720 recodified from renumbered Section R20-2-720 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R20-2-721. Renumbered

Historical Note
Renumbered Section R3-7-721 recodified from renumbered Section R20-2-721 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-722. Reserved

Historical Note
Reserved Section R3-7-722 recodified from reserved Section R20-2-722 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-723. Reserved

Historical Note
Reserved Section R3-7-723 recodified from reserved Section R20-2-723 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-724. Reserved

Historical Note
Reserved Section R3-7-724 recodified from reserved Section R20-2-724 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-725. Reserved

Historical Note
Reserved Section R3-7-725 recodified from reserved Section R20-2-725 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-726. Reserved

Historical Note
Reserved Section R3-7-726 recodified from reserved Section R20-2-726 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-727. Reserved

Historical Note
Reserved Section R3-7-727 recodified from reserved Section R20-2-727 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-728. Reserved

Historical Note
Reserved Section R3-7-728 recodified from reserved Section R20-2-728 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-729. Reserved

Historical Note
Reserved Section R3-7-729 recodified from reserved Section R20-2-729 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-730. Reserved

Historical Note
Reserved Section R3-7-730 recodified from reserved Section R20-2-730 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-731. Reserved

Historical Note
Reserved Section R3-7-731 recodified from reserved Section R20-2-731 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-732. Reserved

Historical Note
Reserved Section R3-7-732 recodified from reserved Section R20-2-732 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-733. Reserved

Historical Note
Reserved Section R3-7-733 recodified from reserved Section R20-2-733 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-734. Reserved

Historical Note
Reserved Section R3-7-734 recodified from reserved Section R20-2-734 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-735. Reserved

Historical Note
Reserved Section R3-7-735 recodified from reserved Section R20-2-735 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-736. Reserved

Historical Note
Reserved Section R3-7-736 recodified from reserved Section R20-2-736 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-737. Reserved

Historical Note
Reserved Section R3-7-737 recodified from reserved Section R20-2-737 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-738. Reserved

Historical Note
Reserved Section R3-7-738 recodified from reserved Section R20-2-738 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-739. Reserved

Historical Note
Reserved Section R3-7-739 recodified from reserved Section R20-2-739 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-740. Reserved

Historical Note
Reserved Section R3-7-740 recodified from reserved Section R20-2-740 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-741. Reserved

Historical Note
Reserved Section R3-7-741 recodified from reserved Section R20-2-741 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-742. Reserved

Historical Note
Reserved Section R3-7-742 recodified from reserved Section R20-2-742 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-743. Reserved

Historical Note
Reserved Section R3-7-743 recodified from reserved Section R20-2-743 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-744. Reserved

Historical Note
Reserved Section R3-7-744 recodified from reserved Section R20-2-744 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-745. Reserved

Historical Note
Reserved Section R3-7-745 recodified from reserved Section R20-2-745 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-746. Reserved

Historical Note
Reserved Section R3-7-746 recodified from reserved Section R20-2-746 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-747. Reserved

Historical Note
Reserved Section R3-7-747 recodified from reserved Section R20-2-747 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-748. Reserved

Historical Note
Reserved Section R3-7-748 recodified from reserved Section R20-2-748 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-749. Definitions Applicable to Arizona CBG and AZRBOB

The following definitions apply only to R3-7-750 through R3-7-762, including Tables A, 1, and 2:

"Designated alternative limit" means a motor fuel property specification, expressed in the nearest part per million by weight for sulfur content, nearest 10th percent by volume for aromatic hydrocarbon content, nearest 10th percent by volume for olefin content, and nearest degree Fahrenheit for T90 and T50, that is assigned by a registered supplier to a final blend of Type 2 Arizona CBG or AZRBOB for purposes of compliance with the Predictive Model Procedures.

"Downstream oxygenate blending" means combining AZRBOB and fuel ethanol to produce fungible Arizona CBG.

"Importer" means any person that assumes title or ownership of Arizona CBG or AZRBOB produced by an unregistered supplier.

"Oxygenate-blending facility" means any location (including a truck) where fuel ethanol is added to Arizona CBG or AZRBOB and the resulting quality or quantity of Arizona CBG is not altered in any other manner except for the addition of a deposit-control or similar additive registered under 40 CFR 79.

"Oxygenated Arizona CBG" means Arizona CBG with a maximum oxygen content of 4.0 wt. percent or another oxygen content approved by the Director under A.R.S. § 41-2124, that is produced and shipped to or within Arizona and sold or offered for sale for use in motor vehicles in the CBG-covered area from November 1 through March 31 of each year.

"Performance standard" means the VOC and NOx emission reduction percentages in R3-7-751(A)(8) and Table 1.

"PM" or "Predictive Model Procedures" means the California Predictive Model and CARB's "California Procedures for Evaluating Alternative Specifications for Phase 2 Reformulated Gasoline Using the California Predictive Model," as adopted April 20, 1995, which is incorporated by reference in R3-7-702.

"PM alternative gasoline formulation" means a final blend of Arizona CBG or AZRBOB that is subject to a set of PM alternative specifications.

"PM alternative specifications" means the specifications for the following fuel properties, as determined using a testing methodology in R3-7-759:

Maximum vapor pressure, expressed in the nearest 100th of a pound per square inch;

Maximum sulfur content, expressed in the nearest part per million by weight;

Maximum olefin content, expressed in the nearest 10th of a percent by volume;

Minimum and maximum oxygen content, expressed in the nearest 10th of a percent by weight;

Maximum T50, expressed in the nearest degree Fahrenheit;

Maximum T90, expressed in the nearest degree Fahrenheit; and

Maximum aromatic hydrocarbon content, expressed in the nearest 10th of a percent by volume.

"PM averaging compliance option" means, with reference to a specific fuel property, the compliance option for PM alternative gasoline formulations by which final blends of Arizona CBG and AZRBOB are assigned designated alternative limits under R3-7-751(G), (H), and (I).

"PM averaging limit" means a PM alternative specification that is subject to the PM averaging compliance option.

"PM flat limit" means a PM alternative specification that is subject to the PM flat limit compliance option.

"PM flat limit compliance option" means, with reference to a specific fuel property, the compliance option that each gallon of gasoline must meet for that specified fuel property as contained in the PM alternative specifications.

"Produce" means:

Except as otherwise provided, to convert a liquid compound that is not Arizona CBG or AZRBOB into Arizona CBG or AZRBOB.

If a person blends a blendstock that is not Arizona CBG or AZRBOB with Arizona CBG or AZRBOB acquired from another person, and the resulting blend is Arizona CBG or AZRBOB, the person conducting the blending produces only the portion of the blend not previously Arizona CBG or AZRBOB. If a person blends Arizona CBG or AZRBOB with other Arizona CBG or AZRBOB in accordance with this Article, without the addition of a blendstock that is not Arizona CBG or AZRBOB, that person is not a producer of Arizona CBG or AZRBOB.

If a person supplies Arizona CBG or AZRBOB to a refiner that agrees in writing to further process the Arizona CBG or AZRBOB at the refiner's refinery and be treated as the producer of Arizona CBG or AZRBOB, the refiner is the producer of the Arizona CBG or AZRBOB.

If an oxygenate blender blends oxygenates into AZRBOB supplied from a gasoline production or import facility, and does not alter the quality or quantity of the AZRBOB or the quality or quantity of the resulting Arizona CBG certified by a registered supplier in any other manner except for the addition of a deposit-control or similar additive, the producer or importer of the AZRBOB, rather than the oxygenate blender, is considered the producer or importer of the full volume of the resulting Arizona CBG.

"Registered supplier" means a producer or importer that supplies Arizona CBG or AZRBOB and is registered with the Director under R3-7-750.

"Third-party terminal" means an owner or operator of a gasoline storage tank facility that accepts custody, but not ownership, of Arizona CBG or AZRBOB from a registered supplier, oxygenate blender, pipeline, or other third-party terminal and relinquishes custody of the Arizona CBG or AZRBOB to a transporter.

"Type 1 Arizona CBG" means a gasoline that meets the standards contained in R3-7-751(A) and Table 1.

"Type 2 Arizona CBG" means a gasoline that meets the standards contained in Table 2 or is certified using the PM according to the requirements of R3-7-751(G), (H), and (I), and meets the requirements in:

R3-7-751(A) beginning April 1 through October 31 of each year, and

R3-7-751(B) beginning November 1 through March 31 of each year.

"Winter" means November 1 through March 31.

Historical Note
New Section R3-7-749 recodified from Section R20-2-749 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-750. Registration Relating to Arizona CBG or AZRBOB

A. Each of the following shall register with the Director before producing, importing, or obtaining custody of Arizona CBG or AZRBOB:
1. A refiner that produces Arizona CBG or AZRBOB;
2. An importer that imports Arizona CBG or AZRBOB;
3. An oxygenate blender that blends oxygenate with AZRBOB to produce Arizona CBG; or
4. A pipeline or third-party terminal that has custody of Arizona CBG or AZRBOB.

B. A person listed in subsection (A) shall register on a form prescribed by the Director and include the following information:
1. Business name, business address, and contact name or position title and telephone number;
2. For each refinery or oxygenate blending facility, the facility name, physical location, contact name or position title and telephone number, and type of facility;
3. For each refinery, oxygenate blending facility, or importer:
   a. The location of the records required under this Article. If records are kept off-site, the primary off-site storage facility name, physical location, and contact name or position title and telephone number; and
   b. If an independent laboratory is used to meet the requirements of R3-7-752(F), the name and address of the independent laboratory, and contact name or position title and telephone number;
4. If required under 40 CFR 80.76(d), the EPA registration number; and
5. A statement of consent permitting the Department or its authorized agent to collect samples and access records as provided in R3-7-716.

C. A person registered under subsection (B) shall notify the Director within 10 days after the effective date of a change in any of the information provided under subsection (B).

D. If a refiner, importer, or oxygenate blender fails to register under this Section, all Arizona CBG or AZRBOB produced by the refiner or oxygenate blender or imported by the importer and transported to the CBG-covered area is presumed to be noncompliant from the date that registration should have occurred.

E. The Department shall maintain a list of all registered suppliers.

Historical Note
New Section R3-7-750 recodified from Section R20-2-750 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-751. Arizona CBG Requirements

A. General fuel property and performance requirements. In addition to the other requirements of this Article and except as provided in subsection (B), all Arizona CBG shall meet the following requirements and for any fuel property not specified, shall meet the requirements in ASTM D4814. The dates in this subsection are compliance dates for the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility.
1. Sulfur: 500 ppm by weight (max).
2. Aromatics: 50 percent by volume (max).
3. Olefins: 25 percent by volume (max).
4. E200: 70-30 percent volume.
5. E300: 100-70 percent volume.
6. Maximum vapor pressure:
   a. October: 9.0 psi.
   b. November 1 - March 31: 9.0 psi.
   c. April: 10.0 psi.
   d. May: 9.0 psi.
   e. June 1 - September 30: 7.0 psi.
   f. A gasoline ethanol blend in the CBG-covered area is subject to the 1 psi vapor pressure waiver, as described in R3-7-708(B), during April only.
7. Oxygen and oxygenates:
   a. Minimum content:
      i. November 1 - March 31: 10 percent fuel ethanol by volume. If A.R.S. § 41-2124(E) petition in effect: 2.7 percent oxygen by weight as approved by the Director.
      ii. April 1 - October 31: 0 percent by weight (any oxygenate).
   b. The maximum oxygen content shall not exceed 4.0 percent by weight for fuel ethanol and as specified in A.R.S. § 41-2122 for other oxygenates, and shall comply with the requirements of A.R.S. § 41-2123.
   c. Arizona CBG shall not contain more than 0.3 volume percent MTBE nor more than 0.1 weight percent oxygen from all other ethers or alcohols listed in A.R.S. § 41-2122.
8. Type 1 Arizona CBG shall meet the Federal Complex Model VOC emissions reduction percentage May 1 through September 15: ≥ 27.5 percent (Federal Complex Model settings: Summer, Area Class B, Phase 2). Type 2 Arizona CBG shall meet CARB Phase 2 requirements.

B. Wintertime requirements. In addition to the other requirements of this Article, the owner or operator of a motor fuel dispensing site or a fleet vehicle fueling facility shall ensure that beginning November 1 through March 31 of each year, all Arizona CBG meets the following fuel property requirements.
1. Sulfur: 80 ppm by weight (max),
2. Aromatics: 30% by volume (max),
3. Olefins: 10% by volume (max),
4. 90% Distillation Temp. (T90): 330° F (max),
5. 50% Distillation Temp. (T50): 220° F (max),
6. Vapor Pressure: 9.0 psi (max), and
7. Oxygenate - Ethanol;
   a. Minimum oxygenate content - 10 percent fuel ethanol by volume;
   b. Maximum oxygen content - 4.0 percent oxygen by weight, and shall comply with the requirements of A.R.S. § 41-2123; and

c. Alternative minimum fuel ethanol content may be used if approved by the Director under A.R.S. § 41-2124(D).

C. Fuel ethanol specifications. A person that uses fuel ethanol as a blending component with AZRBOB or Arizona CBG shall ensure that the fuel ethanol meets the requirements in ASTM D4806 and the following:
1. A sulfur content not exceeding 10 ppm by weight,
2. An olefins content not exceeding 0.5 percent by volume, and
3. An aromatic hydrocarbon content not exceeding 1.7 percent by volume.

D. General elections. Except as provided in subsection (E), a registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with Type 1 Arizona CBG, Type 2 Arizona CBG, or the PM alternative gasoline formulation requirements and, if the registered supplier will supply Arizona CBG or AZRBOB that complies with the PM alternative gasoline formulation requirements, whether the registered supplier will certify using the CARB Phase 2 model; and
2. For each applicable fuel property or performance standard in the election under subsection (D)(1), whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards. A registered supplier shall not elect to comply with average standards unless the registered supplier is in compliance with R3-7-760. A registered supplier shall not elect to comply with Type 1 Arizona CBG average standards in Table 1, columns B and C, from September 16 through October 31 and February 1 through April 30.

E. Winter elections. Beginning November 1 through March 31 of each year, a registered supplier shall ensure that all Arizona CBG or AZRBOB complies with Type 2 Arizona CBG requirements or the PM alternative gasoline formulation requirements under Table 2. A registered supplier shall make an initial election, and a subsequent election each time a change occurs, before beginning to transport Arizona CBG or AZRBOB. A registered supplier shall make the election with the Director on a form or in a format prescribed by the Director. The election shall state:
1. Whether the registered supplier (at each point where the Arizona CBG or AZRBOB is certified) will supply Arizona CBG or AZRBOB that complies with the Type 2 Arizona CBG or the PM alternative gasoline formulation requirements; and
2. For each applicable fuel property, whether the Arizona CBG or AZRBOB will comply with the average standards or per-gallon standards.

F. A registered supplier may elect and produce Type 1 Arizona CBG from December 1 through March 31 but the registered supplier shall not distribute the Arizona CBG to a motor fuel dispensing site within the CBG-covered area before April 1.

G. Certification as Type 1 Arizona CBG or Type 2 Arizona CBG. A registered supplier shall certify Arizona CBG or AZRBOB under R3-7-752 as meeting all requirements of the election made in subsection (D) or (E). For each fuel property, Type 1 Arizona CBG shall comply with the requirements in either column A or columns B through D of Table 1, and shall be certified using the Federal Complex Model, which is incorporated by reference in R3-7-702. For each fuel property, Type 2 Arizona CBG shall comply with the requirements of columns A and B (averaging option), or column C in Table 2. The PM alternative gasoline formulation shall meet the requirements of subsections (H), (I), and (J), and column A of Table 2. A registered supplier may certify Arizona CBG or AZRBOB using an equivalent test method that the Department approves using the criteria stated in R3-7-759.

H. Certification and use of Predictive Model for alternative PM gasoline formulations.
1. Except as provided in subsections (H)(4) and (J), a registered supplier shall use the PM as provided in the Predictive Model Procedures.
2. A registered supplier shall certify a PM alternative gasoline formulation with the Director by either:
   a. Submitting to the Director a complete copy of the documentation provided to the executive officer of CARB according to 13 California Code of Regulations, Section 2264 and subsection (J); or
   b. Notifying the Director, on a form prescribed by or in a format acceptable to the Director, of:
      i. The PM alternative specifications that apply to the final blend, including for each specification whether it is a PM flat limit or a PM averaging limit; and
      ii. The numerical values for percent change in emissions for oxides of nitrogen and hydrocarbons determined in accordance with the Predictive Model Procedures.
3. A registered supplier shall deliver the certification required under subsection (H)(2) to the Director before transporting the PM alternative gasoline formulation.
4. Restrictions for elections to sell or supply final blends as PM alternative gasoline formulations.
   a. A registered supplier shall not make a new election to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation if the registered supplier has an outstanding requirement under subsection (K) to provide offsets for fuel properties at the same production or import facility.
   b. If a registered supplier elects to sell or supply from its production or import facility a final blend of Arizona CBG as a PM alternative gasoline formulation subject to a PM averaging compliance option for one or more fuel properties, the registered supplier shall not elect any other compliance option, including another PM alternative gasoline formulation, if an outstanding requirement to provide offsets for fuel properties exists under the provisions of subsection (K). This subsection does not preclude a registered supplier from electing another PM alternative gasoline formulation if:
      i. The PM flat limit for one or more fuel properties is changed to a PM averaging limit, or a single PM averaging limit for which there is no outstanding requirement to provide offsets is changed to a PM flat limit;
      ii. There are no changes to the PM alternative specifications for remaining fuel properties; and
      iii. The new PM alternative formulation meets the criteria in the Predictive Model Procedures.
   c. If a registered supplier elects to sell or supply from the registered supplier's production or import facility a final blend of Arizona CBG as a PM alternative

gasoline formulation, the registered supplier shall not use a previously assigned designated alternative limit for a fuel property to provide offsets under subsection (K).

d. If a registered supplier notifies the Director under subsection (D) or (E) that a final blend of Arizona CBG is sold or supplied from a production or import facility as a PM alternative gasoline formulation, all final blends of Arizona CBG or AZRBOB subsequently sold or supplied from that production or import facility are subject to the same PM alternative specifications until the registered supplier either:

i. Designates a final blend at that facility as a PM alternative gasoline formulation subject to different PM alternative specifications; or

ii. Elects, under subsection (D) or (E), a final blend at that facility subject to a flat limit compliance option or an averaging compliance option.

I. Prohibited activities regarding PM alternative gasoline formulations. A registered supplier shall not sell, offer for sale, supply, or offer to supply from the registered supplier's production or import facility Arizona CBG that is reported as a PM alternative gasoline formulation under R3-7-752 if any of the following occur:

1. The elected PM alternative specifications do not meet the criteria for approval in the Predictive Model Procedures,
2. The registered supplier is prohibited by subsection (H)(4)(a) from electing to sell or supply the gasoline as a PM alternative gasoline formulation,
3. The gasoline fails to conform with any PM flat limit in the PM alternative specifications election, or
4. With respect to any fuel property for which the registered supplier elects a PM averaging limit:

a. The gasoline exceeds the applicable PM average limit in Table 2, column B, and no designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2); or

b. A designated alternative limit for the fuel property is established for the gasoline in accordance with subsection (H)(2), and either the gasoline exceeds the designated alternative limit for the fuel property or the designated alternative limit for the fuel property exceeds the PM averaging limit and the exceedance is not fully offset in accordance with subsection (K).

J. Oxygen content requirements for PM alternative gasoline formulations. A registered supplier shall ensure that from November 1 through March 31, all alternative PM gasoline formulations comply with oxygen content requirements for the CBG-covered area. Regardless of the oxygen content, a registered supplier shall certify the final alternative PM gasoline formulation using the PM with a minimum oxygen content of 2.0 percent by weight. A registered supplier may use the CARBOB Model as a substitute for the preparation of a fuel ethanol hand blend and use the fuel qualities calculated under the CARBOB Model for compliance and reporting purposes.

K. Offsetting fuel properties and performance standards. A registered supplier that elects to comply with the averaging standards for any of the fuel properties or performance standards contained in Tables 1 and 2, or the PM, shall, from a single production or import facility, complete physical transfer of certified Arizona CBG or AZRBOB in sufficient quantity to offset the amount by which the Arizona CBG or AZRBOB exceeds the averaging standard according to the following schedule:

1. A registered supplier that elects to comply with the averaging standards contained in Table 2 or the PM shall offset each exceeded average standard within 90 days before or after beginning to transport any final blend of Arizona CBG or AZRBOB from the production or import facility;
2. A registered supplier that elects to comply with the averaging standard for the VOC Emission Reduction Percentage in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period; and
3. A registered supplier that elects to comply with the averaging standard for the NOx Emission Reduction Percentage contained in Table 1, column B, shall offset an exceedance of the standard that occurs from May 1 to September 15 during that same period.

L. Consequence of failure to comply with averages.

1. In addition to a penalty under R3-7-762, if any, a registered supplier that fails to comply with a requirement of subsection (K) shall meet the applicable per-gallon standards contained in Table 1, Table 2, or an alternative PM gasoline formulation, for a probationary period as follows:

a. For a registered supplier that elects to comply with the standards contained in Table 1, the probationary period begins on the first day of the next averaging season and ends on the last day of that averaging season if the conditions of subsection (L)(2) are met;

b. For a registered supplier that elects to comply with the standards contained in Table 2 or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives a notice from the Director, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period. The probationary period ends 90 days after its beginning date.

2. A registered supplier shall not produce or import Arizona CBG or AZRBOB under an averaging compliance election until:

a. The registered supplier submits a compliance plan to the Director that includes:

i. An implementation schedule for actions to correct noncompliance, and

ii. Reporting requirements that document implementation of the compliance plan,

b. The Director approves the plan,

c. The registered supplier implements the plan, and

d. The registered supplier achieves compliance.

3. If a registered supplier fails to comply with the requirements of subsection (K) within one year of the end of a probationary period under subsection (L)(1), the registered supplier shall comply with applicable per-gallon standards for a subsequent probationary period of two years, or until the conditions in subsection (L)(2) are satisfied, whichever is later.

a. If a registered supplier elects to comply with the Table 1 standards, the probationary period begins on the first day of the next averaging season.

b. If a registered supplier elects to comply with the Table 2 standards or the PM, the probationary period begins no later than 90 days after the registered supplier determines, or receives notice from the Direc-

tor, that the registered supplier did not comply with the requirements of subsection (K). Before the probationary period begins, the registered supplier shall notify the Director in writing of the beginning date of the probationary period.

4. If a registered supplier fails to comply with the requirements of subsection (K) within one year after the end of a probationary period provided under subsection (L)(3), the registered supplier shall permanently comply with applicable per-gallon standards.

M. Effect of VOC survey failure. Each time a VOC survey conducted under R3-7-760 shows excess VOC emissions in the CBG-covered area, the VOC emissions performance reduction in R3-7-751(A)(8) and the minimum per-gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per-gallon standard in Table 1, column A.

N. Effect of NOx survey failure. Each time a NOx survey conducted under R3-7-760 shows excess NOx emissions in the CBG-covered area, the NOx average emission reduction percentage applicable to the period of May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent.

O. Subsequent survey compliance. If the minimum VOC or average NOx emissions reduction percentage has been made more stringent according to subsection (M) or (N) and all emissions reduction surveys for VOC or NOx for two consecutive years show emissions within the applicable adjusted reduction percentage in the CBG-covered area, the applicable VOC or NOx emissions adjusted reduction percentage shall be reduced by an absolute 1.0 percent beginning in the year following the year in which the second compliant survey is conducted. Each emissions reduction percentage adjusted under this subsection shall not be decreased below the following:

1. >27 percent for the VOC emissions reduction percentage, May 1 - September 15, Table 1, column C; and
2. >6.8 percent for the NOx emissions reduction percentage, May 1 - September 15, Table 1, column B.

P. Subsequent survey failures. If a VOC or NOx emissions reduction percentage is made less stringent under subsection (O) and a subsequent VOC or NOx survey shows excess VOC or NOx emissions in the CBG-covered area:

1. For a VOC survey failure, the Federal Complex Model VOC emissions reduction percentage in R3-7-751(A)(8) and the minimum per gallon VOC emission reduction percentage in Table 1, column C shall be increased by an absolute 1.0 percent, not to exceed the VOC percent emissions reduction percentage per gallon standard in Table 1, column A;
2. For a NOx survey failure, the NOx average emission reduction percentage applicable May 1 through September 15 in Table 1, column B shall be increased by an absolute 1.0 percent; and
3. If the VOC or NOx emission reduction percentage is increased under subsection (P)(1) or (2), the VOC or NOx emission reduction percentage shall not be made less stringent regardless of the result of subsequent surveys for VOC or NOx emissions.

Q. Effective date for adjusted standards. If a performance standard is adjusted by operation of subsection (M), (N), (O), or (P), the effective date for the change is the beginning of the next averaging season for which the standard is applicable.

Historical Note

New Section R3-7-751 recodified from Section R20-2-751 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-751.01. Repealed

Historical Note

Repealed Section R3-7-751.01 recodified from repealed Section R20-2-751.01 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-752. General Requirements for Registered Suppliers

A. A registered supplier shall certify that each batch of Arizona CBG or AZRBOB transported for sale or use in the CBG-covered area meets the standards in this Article.

B. A registered supplier shall make the certification on a form or in a format prescribed by the Director. The registered supplier shall include in the certification information on shipment volumes, fuel properties as determined under R3-7-759, and performance standards for each batch of Arizona CBG or AZRBOB. The registered supplier shall submit the certification to the Director on or before the 15th day of each month for each batch of Arizona CBG or AZRBOB transported during the previous month.

C. Recordkeeping and records retention.

1. A registered supplier that samples and analyzes a final blend or shipment of Arizona CBG or AZRBOB under this Section shall maintain, for five years from the date of each sampling, records of the following:
   a. Sample date;
   b. Identity of blend or product sampled;
   c. Container or other vessel sampled;
   d. The final blend or shipment volume; and
   e. The test results for sulfur, aromatic hydrocarbon, olefin, oxygen, vapor pressure, and as applicable, T50, T90, E200, and E300 as determined under R3-7-759.
2. If Arizona CBG or AZRBOB produced or imported by a registered supplier is not tested and documented as required by this Section, the Director shall deem the Arizona CBG or AZRBOB to have a vapor pressure, sulfur, aromatic hydrocarbon, olefin, oxygen, T50, and T90 that exceeds the standards specified in R3-7-751 or the comparable PM averaging limits, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.
3. A registered supplier shall provide to the Director any records maintained by the registered supplier under this Section within 20 days of a written request from the Director. If a registered supplier fails to provide records for a blend or shipment of Arizona CBG or AZRBOB, the Director shall deem the final blend or shipment of Arizona CBG or AZRBOB in violation of R3-7-751, unless the registered supplier demonstrates to the Director that the Arizona CBG or AZRBOB meets all applicable fuel property limits and performance standards.

D. Notification requirement. A registered supplier shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.

E. Quality Assurance and Quality Control (QA/QC) Program. A registered supplier shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the registered supplier's laboratory testing of Arizona CBG or AZRBOB. The registered supplier shall submit the QA/QC program to the Director for approval at least three months before the registered supplier transports Arizona CBG or AZRBOB. The

Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the registered supplier's laboratory testing procedures comply with R3-7-759 and the data generated by the registered supplier's laboratory are complete, accurate, and reproducible. If the registered supplier makes significant changes to the QA/QC program, the registered supplier shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the original quality objectives. The Director shall approve the changed QA/QC program if it meets the quality objectives. Instead of developing a QA/QC program, a registered supplier may comply with the independent testing requirements of subsection (F).

F. Independent testing.

1. A registered supplier of Arizona CBG or AZRBOB that does not develop a QA/QC program shall conduct a program of independent sample collection and analysis for the Arizona CBG or AZRBOB produced or imported, that complies with one of the following:
   a. Option 1. A registered supplier shall, for each batch of Arizona CBG or AZRBOB produced or imported, have an independent laboratory collect and analyze a representative sample from the batch using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
   b. Option 2. A registered supplier shall have an independent testing program for all Arizona CBG or AZRBOB that the registered supplier produces or imports that consists of the following:
      i. An independent laboratory shall collect a representative sample from each batch;
      ii. The Director or designee shall identify up to 10% of the samples collected under subsection (F)(1)(b)(i) for analysis; and
      iii. The independent laboratory shall, for each sample identified by the Director or designee, analyze the sample using the methodology specified in R3-7-759 for compliance with each fuel property and performance standard for which the Arizona CBG or AZRBOB is certified.
2. The Director or designee may request in writing a duplicate of the batch sample collected under subsection (F)(1)(a) or (b) for analysis by a laboratory selected by the Director or designee. The registered supplier shall submit a duplicate of the sample to the Director within 24 hours of the written request.
3. Designation of independent laboratory.
   a. A registered supplier that does not develop a QA/QC program shall designate one independent laboratory for each production or import facility at which the registered supplier produces or imports Arizona CBG or AZRBOB. The independent laboratory shall collect samples and perform analyses according to subsection (F).
   b. A registered supplier shall identify the designated independent laboratory to the Director under the registration requirements of R3-7-750.
   c. A laboratory is considered independent if:
      i. The laboratory is not operated by a registered supplier or the registered supplier's subsidiary or employee,
      ii. The laboratory does not have any interest in any registered supplier, and
      iii. The registered supplier does not have any interest in the designated laboratory.
   d. Notwithstanding the restrictions in subsection (F)(3)(c), the Director shall consider a laboratory independent if it is owned or operated by a pipeline owned or operated by four or more registered suppliers.
   e. A registered supplier shall not use a laboratory that is debarred, suspended, or proposed for debarment according to the Government-wide Debarment and Suspension regulations, 40 CFR 32, or the Debarment, Suspension and Ineligibility provisions of the Federal Acquisition Regulations, 48 CFR 9.4.
4. A registered supplier shall ensure that its designated independent laboratory:
   a. Records the following at the time the designated independent laboratory collects a representative sample from a batch of Arizona CBG or AZRBOB:
      i. The producer's or importer's assigned batch number for the batch sampled;
      ii. The volume of the batch;
      iii. The identification number of the gasoline storage tank in which the batch is stored at the time the sample is collected;
      iv. The date and time the batch became Arizona CBG or AZRBOB;
      v. The date and time the sample is collected;
      vi. The grade of the batch (for example, unleaded premium, unleaded mid-grade, or unleaded); and
      vii. For Arizona CBG or AZRBOB produced by computer-controlled in-line blending, the date and time the blending process began and the date and time the blending process ended, unless exempt under subsection (G);
   b. Retains each sample collected under this subsection for at least 45 days, unless this time is extended by the Director for up to 180 days;
   c. Submits to the Director a quarterly report on or before the 15th day of January, April, July, and October of each year that includes, for each sample of Arizona CBG or AZRBOB analyzed under subsection (F):
      i. The results of the independent laboratory's analyses for each fuel property, and
      ii. The information specified in subsection (F)(4)(a) for each sample; and
   d. Supplies to the Director, upon request, a duplicate of the sample.

G. Exemptions to QA/QC and independent laboratory testing requirements. A registered supplier that produces or imports Arizona CBG or AZRBOB using computer-controlled in-line blending equipment and operates under an exemption from EPA under 40 CFR 80.65(f)(iv), is exempt from the requirements of subsections (E) and (F), if reports of the results of the independent audit program of the registered supplier's computer-controlled in-line blending operation, which are submitted to EPA under 40 CFR 80.65(f)(iv), are submitted to the Director by March 1 of each year.

H. Use of laboratory analysis for certification of Arizona CBG and AZRBOB.

1. If both a registered supplier and an independent laboratory collect a sample from the same batch of Arizona CBG or AZRBOB and perform a laboratory analysis

under subsection (F) to determine compliance of the sample with a fuel property, the registered supplier and independent laboratory shall use the same test methodology. The results of the analysis conducted by the registered supplier shall be used for certification of the Arizona CBG or AZRBOB under subsection (B), unless the absolute value of the difference between the two results is larger than one of the following:
a. Sulfur content: 25 ppm by weight,
b. Aromatics: 2.7% by volume,
c. Olefins: 2.5% by volume,
d. Fuel ethanol: 0.4% by volume,
e. Vapor pressure: 0.3 psi,
f. 50% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
g. 90% distillation temperature: ASTM reproducibility for that sample using the slope from the registered supplier's results,
h. E200: 2.5% by volume,
i. E300: 3.5% by volume, or
j. API gravity: 0.3° API.

2. If the absolute value of the difference between the results of the analyses conducted by the registered supplier and independent laboratory is larger than one of the values specified in subsection (H)(1), the registered supplier shall use one of the following for certification of the batch of Arizona CBG or AZRBOB under subsection (B):
a. The larger of the two values for each fuel property, except the smaller of the two values shall be used for measures of oxygenates; or
b. Have a second independent laboratory analyze the Arizona CBG or AZRBOB for each fuel property. If the difference between the results obtained by the second independent laboratory and those obtained by the registered supplier are within the range listed in subsection (H)(1), the registered supplier's results shall be used for certifying the Arizona CBG or AZRBOB under subsection (B).

Historical Note
New Section R3-7-752 recodified from Section R20-2-752 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-753. General Requirements for Pipelines and Third-party Terminals

A. A pipeline or third-party terminal shall not accept Arizona CBG or AZRBOB for transport unless:
1. The Arizona CBG or AZRBOB is physically transferred from an importer, refiner, oxygenate blender, pipeline, or third-party terminal registered with the Department under R3-7-750; and
2. The registered supplier provides written verification that the gasoline is Arizona CBG or AZRBOB and complies with the standards in R3-7-751(A) or (B), as applicable, without reproducibility or numerical rounding.

B. A pipeline or third-party terminal that transports Arizona CBG or AZRBOB shall collect a sample of each incoming batch. The pipeline or third-party terminal shall retain the sample for at least 30 days unless this time is extended for an individual sample for up to 180 days by the Director.

C. A pipeline shall conduct quality control testing of Arizona CBG or AZRBOB at a frequency of at least one sample from one batch completing shipment for each registered supplier each day at each input location.

D. A pipeline shall provide the Director with a report summarizing the quality control testing results obtained under subsection (C) within 10 days of the end of each month. The report shall contain the quantity of Arizona CBG or AZRBOB, date tendered, whether the Arizona CBG or AZRBOB was transported by pipeline, present sample location, and laboratory analysis results.

E. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, but is within reproducibility, the pipeline shall notify the Director by fax within 48 hours of the batch volume and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results.

F. If a batch does not meet the standards in R3-7-751(A) or (B), as applicable, including reproducibility, the pipeline or third-party terminal shall notify the Director by fax within 24 hours of the batch quantity and date tendered, proposed shipment date, whether the batch was transported by the pipeline, present batch location, and laboratory analysis results. If the batch is in the pipeline's or third-party terminal's control, the pipeline or third-party terminal shall prevent release of the batch from a distribution point until the batch is certified as meeting the standards in R3-7-751(A) or (B), as applicable.

G. A pipeline or third-party terminal shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the pipeline's or third-party terminal's laboratory testing. The QA/QC program for a pipeline or third-party terminal shall include a description of the laboratory testing protocol used to verify that Arizona CBG or AZRBOB transported to the CBG-covered area meets the standards in R3-7-751(A) or (B). A pipeline or third-party terminal shall submit the QA/QC program to the Director for approval at least three months before the pipeline or third-party terminal begins to transport Arizona CBG or AZRBOB. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the pipeline's or third-party terminal's laboratory testing produces data that are complete, accurate, and reproducible. If a pipeline or third-party terminal makes significant changes to the QA/QC program, the pipeline or third-party terminal shall resubmit the QA/QC program to the Director for review and approval. Within 30 days of receiving the changed QA/QC program, the Director shall determine whether the changed QA/QC program meets the quality objectives originally approved by the Department. The Director shall approve the changed QA/QC program if it meets the quality objectives.

H. A portion of a facility that a third-party terminal uses for production, import, or oxygenate blending is exempt from this Section, but the third-party terminal shall operate the exempt portion of the facility in compliance with requirements for registered suppliers in R3-7-752 and oxygenate blenders in R3-7-755, as applicable.

I. A pipeline is not liable under R3-7-761 if it follows all of the procedures in this Section.

Historical Note
New Section R3-7-753 recodified from Section R20-2-753 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-754. Downstream Blending Exceptions for Transmix

A. A pipeline or third-party terminal may blend transmix into Arizona CBG or AZRBOB at a rate not to exceed 1/4 of one percent by volume. Each pipeline or third-party terminal shall document the transmix blending (recording each batch and volume of transmix blended) and maintain the records at the third-party terminal for two years from the date of blending.

B. One of two methods shall be used to measure the transmix as it is blended into the product stream:
1. Meters, calibrated at least twice each year; or
2. Tank gauge as per API Manual of Petroleum Measurement Standards, Chapters 3.1A (1st edition, December 1994) and 3.1B (1st edition, April 1992), incorporated by reference and on file with the Department. A copy may also be obtained at American Petroleum Institute, 1220 L St., N.W., Washington, D.C. 20005-4070. This incorporation by reference contains no future editions or amendments.

Historical Note
New Section R3-7-754 recodified from Section R20-2-754 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-755. Additional Requirements for AZRBOB and Downstream Oxygenate Blending

A. Application of Arizona CBG standards to AZRBOB.
1. Determining whether AZRBOB complies with Arizona CBG standards.
   a. If a registered supplier designates a final blend as AZRBOB and complies with the provisions of this Section, the fuel properties and performance standards of the AZRBOB, for purposes of compliance with Table 2, are determined by adding the specified amount of fuel ethanol to a representative sample of the AZRBOB and testing the resulting gasoline using the test methods in R3-7-759 or certifying the ARZBOB using the CARBOB model. If the registered supplier designates a range of amounts of fuel ethanol to be added to the AZRBOB, the minimum designated amount of fuel ethanol shall be added to the AZRBOB to determine the fuel properties and performance standards of the resulting Arizona CBG. If a registered supplier does not comply with this subsection, the Department shall determine whether the AZRBOB complies with applicable fuel properties and performance standards, excluding requirements for vapor pressure, without adding fuel ethanol to the AZRBOB.
   b. In determining whether AZRBOB complies with the Arizona CBG standards, the registered supplier shall ensure that the fuel ethanol added to the representative sample under subsection (A)(1)(a) is representative of the fuel ethanol the registered supplier reasonably expects will be subsequently added to the AZRBOB.
2. Calculating the volume of AZRBOB. If a registered supplier designates a final blend as AZRBOB and complies with this Section, the volume of AZRBOB is calculated for compliance purposes under R3-7-751 by adding the minimum amount of fuel ethanol designated by the registered supplier. If a registered supplier fails to comply with this subsection, the Department shall calculate the volume of AZRBOB for purposes of compliance with applicable fuel properties and performance standards without adding the amount of fuel ethanol to the AZRBOB.

B. Restrictions on transferring AZRBOB.
1. A person shall not transfer ownership or custody of AZRBOB to any other person unless the transferee notifies the transferor in writing that:
   a. The transferee is a registered oxygenate blender and will add fuel ethanol in the amount (or within the range of amounts) designated in R3-7-757 before the AZRBOB is transferred from a final distribution facility, or
   b. The transferee will take all reasonably prudent steps necessary to ensure that the AZRBOB is transferred to a registered oxygenate blender that adds the amount (or within the range of amounts) of fuel ethanol designated in R3-7-757 to the AZRBOB before the AZRBOB is transferred from a final distribution facility.
2. A person shall not sell or supply Arizona CBG from a final distribution facility if the amount or range of amounts of fuel ethanol designated in R3-7-757 has not been added to the AZRBOB.

C. Restrictions on blending AZRBOB with other products. A person shall not combine AZRBOB supplied from the facility at which the AZRBOB is produced or imported with any other AZRBOB, gasoline, blendstock, or oxygenate, except for:
1. Fuel ethanol in the amount (or within the range of amounts) specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility, or
2. Other AZRBOB for which the same fuel ethanol amount (or range of amounts) is specified by the registered supplier at the time the AZRBOB is supplied from the production or import facility.

D. Quality assurance sampling and testing requirements for a registered supplier supplying AZRBOB from a production or import facility. A registered supplier supplying AZRBOB from a production or import facility shall use an independent third-party quality assurance sampling and testing program as described in subsection (E) or conduct a quality assurance sampling and testing program that meets the requirements of 40 CFR 80.69(a)(7), as it existed on July 1, 1996, except for the changes listed in subsections (D)(1) through (3). 40 CFR 80.69(a)(7), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
1. 40 CFR 80.69(a)(7). The word “RBOB” is changed to read “AZRBOB”;
2. 40 CFR 80.69(a)(7). “...using the methodology specified in § 80.46...” is changed to read “...using the methodology specified in R3-7-759...;” and
3. 40 CFR 80.69(a)(7)(ii). “(within the correlation ranges specified in § 80.65(e)(2)(i))” is changed to read “(within the ranges of the applicable test methods).

E. General requirements for an independent third-party quality assurance sampling and testing program. A registered supplier may contract with an independent third party that conducts a quality assurance sampling and testing program for one or more registered suppliers. The registered supplier shall ensure that the quality assurance sampling and testing program:
1. Is designed and conducted by a third party that is independent of the registered supplier. To be considered independent:
   a. The third party shall not be an employee of a registered supplier,
   b. The third party shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the third party;
2. Is conducted from November 1 through March 31 on all samples collected under the program design previously approved by the Director under subsection (G);

3. Involves sampling and testing that is representative of all Arizona CBG dispensed in the CBG-covered area;
4. Analyzes each sample for oxygenate according to the methodologies specified in R3-7-759;
5. Bases results on an analysis of each sample collected during the sampling period unless a specific sample does not comply with the applicable per gallon maximum or minimum standards for the fuel property being evaluated in addition to any reproducibility applicable to the fuel property;
6. Participates in a correlation program with the Director to ensure the validity of analysis results;
7. Does not provide advance notice, except as provided in subsection (F), of the date or location of any sampling;
8. Provides a duplicate of any sample, with information regarding where and the date on which the sample was collected, upon request of the Director, within 30 days after submitting the report required under subsection (E)(10);
9. Permits a Department official to monitor sample collection, transportation, storage, and analysis at any time; and
10. Prepares and submits a report to the Director within 30 days after the sampling is completed that includes the following information:
    a. Name of the person collecting the samples;
    b. Attestation by an officer of the third party that the sampling and testing was done according to the program plan approved by the Director under subsection (G) and the results are accurate;
    c. Identification of the registered supplier for whom the sampling and testing program was conducted if the sampling and testing program was conducted for only one registered supplier;
    d. Identification of the area from which the samples were collected;
    e. Address of each motor fuel dispensing site from which a sample was collected;
    f. Dates on which the samples were collected;
    g. Results of the analysis of the samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable;
    h. Name and address of each laboratory at which the samples were analyzed;
    i. Description of the method used to select the motor fuel dispensing sites from which a sample was collected;
    j. Number of samples collected at each motor fuel dispensing site; and
    k. Justification for excluding a collected sample if one was excluded.

F. An independent third party that contracts with one or more registered suppliers to conduct a quality assurance sampling and testing program shall begin the sampling on the date selected by the Director. The Director shall inform the third party of the date selected at least 10 business days before sampling is to begin.

G. To obtain the Director's approval of an independent third-party quality assurance sampling and testing program plan, the person seeking the approval shall:
1. Submit the plan to the Director no later than January 1 to cover the sampling and testing period from November 1 through March 31 of each year, and
2. Have the plan signed by an officer of the third party that will conduct the sampling and testing program.

H. No later than September 1 of each year, a registered supplier that intends to meet the requirements in subsection (D) by contracting with an independent third party to conduct quality assurance sampling and testing from November 1 through March 31 shall enter into the contract and pay all of the money necessary to conduct the sampling and testing program. The registered supplier may pay the money necessary to conduct the sampling and testing program to the third party or to an escrow account with instructions to the escrow agent to release the money to the third party as the testing program is implemented. No later than September 15, the registered supplier shall submit to the Director a copy of the contract with the third party, proof that the money necessary to conduct the sampling and testing program has been paid, and, if applicable, a copy of the escrow agreement.

I. Requirements for oxygenate blenders.
1. Requirement to add fuel ethanol to AZRBOB. If an oxygenate blender receives AZRBOB from a transferor to whom the oxygenate blender represents that fuel ethanol will be added to the AZRBOB, the oxygenate blender shall add fuel ethanol to the AZRBOB in the amount (or within the range of amounts) identified in the documentation accompanying the AZRBOB.
2. Additional requirements for oxygenate blending at terminals. An oxygenate blender that makes Arizona CBG by blending fuel ethanol with AZRBOB in a motor fuel storage tank, other than a truck used to deliver motor fuel to a retail outlet or bulk-purchaser consumer facility, shall determine the oxygen content and volume of the Arizona CBG before shipping, by collecting and analyzing a representative sample of the Arizona CBG, using the methodology in R3-7-759.
3. Additional requirements for oxygenate blending in trucks. An oxygenate blender that blends AZRBOB in a motor fuel delivery truck shall conduct quality assurance sampling and testing that meets the requirements in 40 CFR 80.69(e)(2), as it existed on July 1, 1996, except for the changes listed in subsections (I)(3)(a) through (c). 40 CFR 80.69(e)(2), July 1, 1996, is incorporated by reference and on file with the Department. A copy may be obtained at the Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov. The material incorporated includes no future editions or amendments.
    a. 40 CFR 80.69(e)(2). The word "RBOB" is changed to read "AZRBOB;"
    b. 40 CFR 80.69(e)(2)(iv). "... using the testing methodology specified at § 80.46 ..." is changed to read "... using the testing methodology specified in R3-7-759...;" and
    c. 40 CFR 80.69(e)(2)(v). "(within the ranges specified in § 80.70(b)(2)(I))" is changed to read "(within the ranges of the applicable test methods)."
4. Additional requirements for in-line oxygenate blending in pipelines using computer-controlled blending.
    a. An oxygenate blender that produces Arizona CBG by blending fuel ethanol with AZRBOB into a pipeline using computer-controlled in-line blending shall, for each batch of Arizona CBG produced:
        i. Obtain a flow proportional composite sample after the addition of fuel ethanol and before combining the resulting Arizona CBG with any other Arizona CBG;
        ii. Determine the oxygen content of the Arizona CBG by analyzing the composite sample within

24 hours of blending using the methodology in R3-7-759; and
iii. Determine the volume of the resulting Arizona CBG.
b. If the test results for the Arizona CBG indicate that it does not contain the amount of fuel ethanol specified by the ranges of the applicable test methods, the oxygenate blender shall:
i. Notify the pipeline to downgrade the Arizona CBG to conventional gasoline or transmix upon arrival in Arizona;
ii. Begin an investigation to determine the cause of the noncompliance;
iii. Collect a representative sample every two hours during each in-line blend of AZRBOB and fuel ethanol, and analyze the samples within 12 hours of collection, until the cause of the noncompliance is determined and corrected; and
iv. Notify the Director in writing within one business day that the Arizona CBG does not comply with the requirements of this Article.
c. The oxygenate blender shall comply with subsection (I)(4)(b)(iii) until the Director determines that the corrective action has remedied the noncompliance.
5. Recordkeeping and records retention.
a. An oxygenate blender shall maintain, for five years from the date of each sampling, records of the following:
i. Sample date,
ii. Identity of blend or product sampled,
iii. Container or other vessel sampled,
iv. Volume of final blend or shipment,
v. Oxygen content as determined under R3-7-759, and
vi. Results from all testing.
b. The Director shall deem that Arizona CBG blended by an oxygenate blender and not tested and documented as required by this Section has an oxygen content that exceeds the standards specified in R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards in R3-7-751.
c. Within 20 days of the Director's written request, an oxygenate blender shall provide any records maintained by the oxygenate blender under this Section. If the oxygenate blender fails to provide records requested for a blend or shipment of Arizona CBG, the Director shall deem that the blend or shipment of Arizona CBG violates R3-7-751 or exceeds the comparable PM averaging limits, if applicable, unless the oxygenate blender demonstrates to the Director that the Arizona CBG meets the standards and limits under R3-7-751.
6. Notification requirement. An oxygenate blender shall notify the Director by fax before transporting Arizona CBG or AZRBOB into the CBG-covered area by a means other than a pipeline.
7. Quality assurance and quality control (QA/QC) program. An oxygenate blender that conducts sampling and testing under subsection (I) in the oxygenate blender's own laboratory shall develop a QA/QC program to demonstrate the accuracy and effectiveness of the oxygenate blender's sampling and testing of Arizona CBG or AZRBOB. The oxygenate blender shall submit the QA/QC program to the Director for approval at least three months before transporting Arizona CBG. The Director shall approve a QA/QC program only if the Director determines that the QA/QC program ensures that the oxygenate blender's sampling and testing produces data that are complete, accurate, and reproducible. Instead of developing a QA/QC program, an oxygenate blender may comply with the independent testing requirements of R3-7-752(F), except that, for sampling and testing conducted under subsection (I)(3), the minimum number of samples collected and tested by the independent laboratory shall be 10% of the number of samples required to be collected and tested under subsection (I).
8. An oxygenate blender that does not conduct laboratory sampling and testing required under subsection (I) in its own laboratory shall designate an independent laboratory, as described in R3-7-752(F), to conduct the sampling and testing required under subsection (I)(7).
9. Within 24 hours of the Director's or designee's written request, an oxygenate blender shall submit a duplicate of any sample collected under subsection (I)(7).

J. Subsection (A)(1)(a) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

Historical Note
New Section R3-7-755 recodified from Section R20-2-755 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-756. Downstream Blending of Arizona CBG with Nonoxygenate Blendstocks

A. A person shall not combine Arizona CBG supplied from a production or import facility with any nonoxygenate blendstock, other than vapor recovery condensate, unless the person demonstrates to the Director:
1. The blendstock added to the Arizona CBG meets all of the Arizona CBG standards regardless of the fuel properties and performance standards of the Arizona CBG to which the blendstock is added;
2. The person meets the requirements in this Article applicable to producers of Arizona CBG; and
3. The resulting fuel blend is not used within the CBG-covered area.

B. Notwithstanding subsection (A), a person may add nonoxygenate blendstock to a previously certified batch or mixture of certified batches of Arizona CBG that does not comply with one or more of the applicable per-gallon standards contained in R3-7-751(A) or (B) if the person obtains prior written approval from the Director based on a demonstration that adding the blendstock will bring the previously certified Arizona CBG into compliance with the applicable per-gallon standards for Arizona CBG. The oxygenate blender or registered supplier shall certify the re-blended Arizona CBG to the Department.

Historical Note
New Section R3-7-756 recodified from Section R20-2-756 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-757. Product Transfer Documentation; Records Retention

A. If a person transfers custody or title to Arizona CBG or AZRBOB, other than when Arizona CBG is sold or dispensed at a motor fuel dispensing site or fleet vehicle fueling facility, the transferor shall provide to the transferee documents that include the following:
1. Volume of Arizona CBG or AZRBOB being transferred;

2. Location of the Arizona CBG or AZRBOB at the time of transfer;
3. Date of the transfer;
4. Product transfer document number;
5. Identification of the gasoline as Arizona CBG or AZRBOB;
6. Minimum octane rating of the Arizona CBG or AZRBOB;
7. For oxygenated Arizona CBG designated for sale for use in motor vehicles from November 1 through March 31, the minimum quantity of fuel ethanol contained in the Arizona CBG;
8. If the product transferred is AZRBOB for which fuel ethanol blending is intended:
   a. Identification of the fuel as AZRBOB and a statement that the "AZRBOB does not comply with the standards for Arizona CBG without the addition of fuel ethanol";
   b. Designation of the AZRBOB as suitable for blending with fuel ethanol;
   c. Fuel ethanol amount or range of amounts that the AZRBOB requires to meet the fuel properties or performance standards claimed by the registered supplier of the AZRBOB, and the applicable specifications for volume percent fuel ethanol and weight percent oxygen content; and
   d. Instructions to the transferee that the AZRBOB may not be combined with any other AZRBOB unless the other AZRBOB has the same requirements for fuel ethanol amount or range of amounts; and
9. The final destination:
   a. When a terminal is the transferor, the owner or operator of the terminal shall include on the product transfer document the terminal name and address, the transporter name and address, and the final destination, which may be a final distribution facility, jobber, marketer, or motor fuel dispensing site;
   b. When a transporter is the transferor, the transporter shall include on the product transfer document the name and address of the transporter and the final destination, which is the location at which the motor fuel will be delivered and off loaded from the truck; and
   c. When a jobber or marketer is the transferor, the jobber or marketer shall include on the product transfer document the name and address of the jobber or marketer and the final destination, which may be a final distribution facility or a motor fuel dispensing site.

B. To enable a transferor to comply fully with the requirement in subsection (A)(9), the transferee shall supply to the transferor information regarding the final destination.

C. A registered supplier, third-party terminal, or pipeline may comply with subsection (A) by using standardized product codes on pipeline tickets if the codes are specified in a manual distributed by the pipeline to transferees of the Arizona CBG or AZRBOB, and the manual includes all required information for the Arizona CBG or AZRBOB.

D. Any transferee in subsection (A), other than a registered supplier, oxygenate blender, third-party terminal, pipeline, motor fuel dispensing site, or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 24 months before the most recent transfer. The transferee shall maintain product transfer documents for the 30 days before the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 24 months elsewhere.

E. A motor fuel dispensing site or fleet vehicle fueling facility shall retain product transfer documents for each shipment of Arizona CBG transferred during the 12 months before the most recent transfer. The motor fuel dispensing site or fleet vehicle fueling facility shall maintain product transfer documents for the three most recent transfers on the premises. The motor fuel dispensing site or fleet vehicle fueling facility may maintain the remaining product transfer documents for the preceding 12 months elsewhere.

F. A registered supplier, oxygenate blender, third-party terminal, or pipeline shall retain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 60 months before the most recent transfer. The transferee shall maintain product transfer documents for each shipment of Arizona CBG or AZRBOB transferred during the 30 days preceding the most recent transfer at the business address listed on the product transfer document. The transferee may maintain all remaining product transfer documents for the preceding 60 months elsewhere.

G. When a person transfers custody or title of fuel ethanol that is intended for use as a blend component in AZRBOB or Arizona CBG, the person shall provide the transferee a document that prominently states that the fuel ethanol complies with the standards for fuel ethanol intended for use as a blend component in AZRBOB or Arizona CBG.

H. Upon request by the Director or designee, a person shall present product transfer documents to the Department within two working days of the request. Legible photocopies of the product transfer documents are acceptable.

Historical Note

New Section R3-7-757 recodified from Section R20-2-757 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-758. Repealed

Historical Note

Repealed Section R3-7-758 recodified Section R20-2-758 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-759. Testing Methodologies

A. Except as provided in subsection (C), a registered supplier or importer certifying Arizona CBG or AZRBOB as meeting the requirements of this Article shall use one of the methods listed in Table A. A copy of the EPA- or CARB-approved ASTM methods may be obtained at: ASTM International (formerly American Society for Testing and Materials), 100 Bar Harbor Drive, West Conshohocken, PA 19428-2959 or www.astm.org. A copy of the CARB methods may be obtained at: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812 or www.arb.ca.gov.

B. An oxygenate blender or third-party terminal certifying Arizona CBG or AZRBOB before transport to the CBG-covered area shall measure fuel ethanol in accordance with the oxygenate blender's or third-party terminal's approved QA/QC program or in accordance with one of the methods listed in Table A.

C. Rather than using a method listed in Table A to certify Arizona CBG or AZRBOB, a registered supplier may use the CARBOB Model and use the fuel-quality measures calculated using the CARBOB Model for compliance and reporting purposes.

D. A test method that the Department determines is equivalent to those listed in Table A may be used to certify Arizona CBG or

AZRBOB. The Department has determined that test methods approved by either the EPA or CARB are equivalent test methods. To determine whether a proposed test method is equivalent to those listed in Table A, the Department shall thoroughly review data from both the proposed and designated test methods and assess whether the accuracy and precision of the proposed method is equal to or better than the accuracy and precision of the designated method and whether there is significant bias between the two methods. The Department shall approve a proposed test method only if the Department determines that the accuracy and precision of the proposed test method is equal to or better than the accuracy and precision of the designated method and receives the concurrence of the EPA Regional Administrator. A correlation equation may be required to align the two methods. If a correlation equation is required to align the two methods, the correlation equation becomes part of the equivalent method.

E. Subsections (C) and (D) will not become effective until Arizona's revised State Implementation Plan is approved by EPA.

Historical Note

New Section R3-7-759 recodified from Section R20-2-759 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

Table A. Weights and Measures Services Division Test Methods for Arizona CBG and AZRBOB

Fuel Parameter	Units	EPA-approved Test Method	EPA-approved Reproducibility	CARB-approved Test Method	CARB-approved Reproducibility
Aromatics	V%	D5769-04			
	V%	D1319-02a (2003)[A]	1.65	D5580-00	1.4
Benzene	V%	D3606-99 (2007)	0.21	D5580-00	0.1409 (X) $^{1.133}$
Olefins	V%	D1319-02a (2003)	0.32 $(x)^{0.5}$	D6550-00 (2005) if correlated to D1319	0.32 (X) $^{0.5;\ \text{Footnote 1}}$
Oxygenates	W%	D5599-00	See test method	D4815-99 (2004)	See test method
	W%	D4815-99 (2004)[B]	See test method		
Vapor Pressure (Correlation Equation) Footnote 2	psi	D5191-01 (2007)	0.3	13 CCR Section 2297	0.21
Sulfur	wppm	D2622-98 (2005)		D5453-93	0.2217 $(x)^{0.92}$ wppm
				D2622-94 (modified)	10-30 wppm R=0.405 (x) > 30 wppm R =0.192 (x)
Distillation T50	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method
Distillation T90	deg F	D86-01 (2007b)	See test method	D86-99ae1	See test method

[A] A refinery or importer may determine aromatics content using ASTM D1319-02a (2003) if the result is correlated to ASTM D5769-98 (2004).
[B] A refinery or importer may determine oxygenate content using ASTM D4815-99 (2004) if the result is correlated to ASTM D5599-00 (2005).
Footnotes:
1. Replace the last sentence in ASTM D6550-00 (2005) Section 1.1 with the following: "The application range is from 0.3 to 25 mass percent total olefin, as defined in Section 2263(b), Title 13, California Code of Regulations. If olefin concentrations are not detected, substitute one-half of the detection limit."
2. When determining vapor pressure, the only correlation equation to be used is equation 1 in ASTM D5191-07, Section 14.2, ASTM equation ((.965X)-A).

Historical Note

New Article 7, Table A recodified from 20 A.A.C. 2, Article 7, Table A at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-760. Compliance Surveys

A. A registered supplier that elects to certify that Arizona CBG or AZRBOB meets an averaging standard under R3-7-751 shall ensure that compliance surveys are conducted in accordance with a compliance survey program plan approved by the Director. The Director shall approve a compliance survey program plan if it:
1. Consists of at least four VOC and NOx surveys conducted at least one per month between May 1 through September 15 of each year, and
2. Complies with subsection (J).

B. If a registered supplier fails to ensure that an approved compliance survey program is conducted, the Director shall issue an order requiring the registered supplier to comply with all applicable fuel property and performance standards on a per-gallon basis for six months or through the end of the survey period identified in subsection (A)(1), whichever is longer. Regardless of when a failure to survey occurs, the Director's order shall require compliance with per-gallon standards from the beginning of the survey period during which the failure to survey occurs.

C. General compliance survey requirements. A registered supplier shall ensure that a compliance survey conforms to the following:
1. Consists of all samples that are collected under an approved survey program plan during any consecutive seven days and that are not excluded under subsection (C)(4);
2. Is representative of all Arizona CBG being dispensed in the CBG-covered area as provided in subsection (G);
3. Analyzes each sample included in the compliance survey for oxygenate type and content, olefins, sulfur, aromatic

hydrocarbons, E200, E300, and vapor pressure according to the test methods in R3-7-759. Vapor pressure is required to be analyzed only from May 1 through September 15;

4. Bases the results of the compliance survey upon an analysis of each sample collected during the course of the compliance survey, unless a sample does not comply with the applicable per gallon maximum or minimum fuel property standard being evaluated in addition to any reproducibility that applies to the fuel property standard; and
5. If a laboratory analyzes the compliance survey samples, the laboratory participates in a correlation program with the Director to ensure the validity of analysis results.

D. If the Director determines that a sample used in a compliance survey does not comply with R3-7-751 or another requirement under this Article, the Director shall take enforcement action against the registered supplier.

E. A registered supplier shall comply with the following VOC and NOx compliance survey requirements:

1. For each compliance survey sample, determine the VOC and NOx emissions reduction percentage based upon the tested fuel properties for that sample using the methodology for calculating VOC and NOx emissions reductions at 40 CFR 80.45, as incorporated by reference in R3-7-702;
2. The CBG-covered area fails a VOC compliance survey if the VOC emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for VOC emissions reduction percentage in Table 1, column A.
3. The CBG-covered area fails a NOx compliance survey if the NOx emissions reduction percentage average of all samples collected during the compliance survey is less than the per-gallon standard for NOx emissions reduction percentage in Table 1, column A.

F. A registered supplier shall determine the result of the series of NOx compliance surveys conducted between May 1 and September 15 as follows:

1. For each compliance survey sample, the NOx emissions reduction percentage is determined based upon the tested fuel properties for that sample using the methodology for calculating NOx emissions reduction at 40 CFR 80.45, as incorporated by reference in R3-7-702; and
2. The CBG-covered area fails the NOx series of compliance surveys conducted between May 1 and September 15 if the NOx emissions reduction percentage average for all compliance survey samples collected during that time is less than the Federal Complex Model per-gallon standard for the NOx emissions reduction percentage in Table 1, column A.

G. General requirements for an independent surveyor conducting a compliance survey. A registered supplier may have the compliance surveys required by this Section conducted by an independent surveyor. The Director shall approve a compliance survey program conducted by an independent surveyor if the compliance survey program:

1. Is designed and conducted by a surveyor that is independent of the registered supplier. To be considered independent:
   a. The surveyor shall not be an employee of any registered supplier,
   b. The surveyor shall not have an obligation to or interest in any registered supplier, and
   c. The registered supplier shall not have an obligation to or interest in the surveyor;
2. Includes enough samples to ensure that the average levels of oxygen, vapor pressure, aromatic hydrocarbons, olefins, T50, T90, and sulfur are determined with a 95 percent confidence level, with error of less than 0.1 psi for vapor pressure, 0.1 percent for oxygen (by weight), 0.5 percent for aromatic hydrocarbons (by volume), 0.5 percent for olefins (by volume), 5°F for T50 and T90, and 10 wppm for sulfur;
3. Requires that the surveyor not provide advance notice, except as provided in subsection (H), of the date or location of any survey sampling;
4. Requires that the surveyor provide a duplicate of any sample taken during the survey, with information regarding the name and address of the facility from and the date on which the sample was taken, upon request of the Director, within 30 days following submission of the survey report required under subsection (G)(6);
5. Requires that the surveyor permit a Department official to monitor sample collection, transportation, storage, and analysis at any time;
6. Requires the surveyor to submit a report of each survey to the Director within 30 days after sampling for the survey is completed that includes the following information:
   a. Name of the person conducting the survey;
   b. Attestation by an officer of the surveyor that the sampling and testing was conducted according to the compliance survey program plan and the results are accurate;
   c. Identification of the registered supplier for whom the compliance survey was conducted if the compliance survey was conducted for only one registered supplier;
   d. Identification of the area from which survey samples were selected;
   e. Dates on which the survey was conducted;
   f. Address of each facility at which a sample was collected, and the date of collection;
   g. Results of the analysis of samples for oxygenate type and oxygen weight percent, aromatic hydrocarbon, and olefin content, E200, E300, and vapor pressure, and the calculated VOC or NOx emissions reduction percentage, as applicable, for each survey conducted during the period identified in subsection (A)(1);
   h. Name and address of each laboratory at which samples were analyzed;
   i. Description of the method used to select the facilities from which a sample was collected;
   j. Number of samples collected from each facility;
   k. Justification for excluding a collected sample from the survey, if one was excluded; and
   l. Average VOC and NOx emissions reduction percentage.

H. An independent surveyor shall begin each survey on a date selected by the Director. The Director shall notify the surveyor of the date selected at least 10 business days before the survey is to begin.

I. To obtain the Director's approval of a compliance survey program plan, the person seeking approval shall:

1. Submit the plan to the Director no later than January 1 to cover the survey period of May 1 through September 15 of each year, and
2. Have the plan signed by a corporate officer of the registered supplier or by an officer of the independent surveyor.

J. No later than April 1 of each year, a registered supplier that intends to meet the requirements in subsection (A) by contracting with an independent surveyor to conduct the compliance survey plan for the next summer and winter season shall enter into the contract and pay all of the money necessary to conduct the compliance survey plan. The registered supplier may pay the money necessary to conduct the compliance survey plan to the independent surveyor or to an escrow account with instructions to the escrow agent to release the money to the independent surveyor as the compliance survey plan is implemented. No later than April 15, the registered supplier shall submit to the Director a copy of the contract with the independent surveyor, proof that the money necessary to conduct the compliance survey plan has been paid, and, if applicable, a copy of the escrow agreement.

Historical Note
New Section R3-7-760 recodified from Section R20-2-760 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-761. Liability for Noncompliant Arizona CBG or AZRBOB

A. Persons liable. If motor fuel designated as Arizona CBG or AZRBOB does not comply with R3-7-751, the following are liable for the violation:
1. Each person who owns, leases, operates, controls, or supervises a facility where the noncompliant Arizona CBG or AZRBOB is found;
2. Each registered supplier whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name, appears at a facility where the noncompliant Arizona CBG or AZRBOB is found; and
3. Each person who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline in a storage tank containing Arizona CBG or AZRBOB found to be noncompliant.

B. Defenses.
1. A person who is otherwise liable under subsection (A) is not liable if that person demonstrates:
   a. That the violation was not caused by the person or person's employee or agent;
   b. That product transfer documents account for all of the noncompliant Arizona CBG or AZRBOB and indicate that the Arizona CBG or AZRBOB complied with this Article; and
   c. That the person had a quality assurance sampling and testing program, as described in subsection (C) in effect at the time of the violation; except that any person who transfers Arizona CBG or AZRBOB, but does not assume title, may rely on the quality assurance program carried out by another person, including the person who owns the noncompliant Arizona CBG or AZRBOB, provided the quality assurance program is properly administered.
2. If a violation is found at a facility that operates under the corporate, trade, or brand name of a registered supplier, that registered supplier must show, in addition to the defense elements in subsection (B)(1), that the violation was caused by:
   a. A violation of law other than A.R.S. Title 41, Chapter 15, Article 6, this Article, or an act of sabotage or vandalism;
   b. A violation of a contract obligation imposed by the registered supplier designed to prevent noncompliance, despite periodic compliance sampling and testing by the registered supplier; or
   c. The action of any person having custody of Arizona CBG or AZRBOB not subject to a contract with the registered supplier but engaged by the registered supplier for transportation of Arizona CBG or AZRBOB, despite specification or inspection of procedures and equipment by the registered supplier designed to prevent violations.
3. To show that the violation was caused by any of the actions in subsection (B)(2), the person must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person.

C. Quality assurance sampling and testing program. To demonstrate an acceptable quality assurance program for Arizona CBG or AZRBOB, at all points in the gasoline distribution network, other than at a service station or fleet owner facility, a person shall present evidence:
1. Of a periodic sampling and testing program to determine compliance with the maximum or minimum standards in R3-7-751; and
2. That each time Arizona CBG or AZRBOB is noncompliant with one of the requirements in R3-7-751:
   a. The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, transporting, or causing the transportation of the noncompliant Arizona CBG or AZRBOB; and
   b. The person remedies the violation as soon as practicable.

Historical Note
New Section R3-7-761 recodified from Section R20-2-761 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-762. Penalties

Any person who violates any provision of this Article is subject to the following:
1. Prosecution for a Class 2 misdemeanor under A.R.S. § 41-2113(B)(4);
2. Civil penalties in the amount of $500 per violation under A.R.S. § 41-2115; and
3. Stop-use, stop-sale, hold, and removal orders under A.R.S. § 41-2066(A)(2).

Historical Note
New Section R3-7-762 recodified from Section R20-2-762 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

Table 1. Type 1 Arizona CBG Standards

	Non-averaging Option	Averaging Option		
	A	B	C	D
Performance Standard/Fuel Property**	Per-Gallon (minimum)	Average	Minimum (per-gallon)	Maximum (per-gallon)
VOC Emission Reduction (%) May 1 - Sept. 15	≥ 27.5	≥ 29.0	≥ 25.0	N/A

NOx Emission Reduction (%) May 1 - Sept. 15	≥ 5.5	≥ 6.8	N/A	N/A
NOx Emission Reduction (%) Sept. 16 - October 31 and February 1 - April 30***	≥ 0.0	N/A	N/A	N/A
Oxygen content: fuel ethanol, (% by weight unless otherwise noted) November 1 - March 31*** April 1 - October 31	N/A 0.0*	N/A N/A	N/A 0.0	N/A 4.0
Oxygen content: other than fuel ethanol, (% by weight) November 1 - March 31*** April 1 - October 31	N/A 0.0	N/A N/A	N/A 0.0	N/A ****
* Maximum oxygen content shall comply with the EPA oxygenate waiver requirements and with A.R.S. § 41-2122. ** Dates represent compliance dates for the owner of a motor fuel dispensing site or a fleet vehicle fueling facility. *** A registered supplier shall certify all Arizona CBG as Type 2 Arizona CBG meeting the standards in Table 2 beginning November 1 through March 31. **** As specified in A.R.S. § 41-2122.				

Historical Note

New Article 7, Table 1 recodified from 20 A.A.C. 2, Article 7, Table 1 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

Table 2. Type 2 Arizona CBG Standards

	Averaging Option		Non-averaging Option	
	A	B	C	
Fuel Property	Maximum Standard (per gallon)	Averaging Standard*	Flat Standard * (per gallon maximum)	Units of Standard
Sulfur Content	80	30	40	Parts per million by weight
Olefin Content	10.0	4.0	6.0	% by volume
90% Distillation Temperature (T90)	330	290	300	Degrees Fahrenheit
50% Distillation Temperature (T50)	220	200	210	Degrees Fahrenheit
Aromatic Hydrocarbon Content	30.0	22.0	25.0	% by volume
Oxygen content: fuel ethanol** November 1 - March 31 April 1 - October 31 The maximum oxygen content EtOH year around	10% fuel ethanol**	– –	10% fuel ethanol** 4.0	% by vol. % by weight
* Instead of the standards in columns B and C, a registered supplier may comply with the standards contained in column A, and R3-7-751(G), (H), and (I) for the use of the PM. ** Maximum oxygen content shall comply with the EPA oxygenate waiver requirements. A registered supplier shall certify all Arizona CBG using fuel ethanol as the oxygenate beginning November 1 through March 31. Alternative fuel ethanol contents not less than 2.7% total oxygen may be used if approved by the Director under A.R.S. § 41-2124(D). NOTE: Dates represent compliance dates for the owner of a motor fuel dispensing site or fleet vehicle fuel facility.				

Historical Note

New Article 7, Table 2 recodified from 20 A.A.C. 2, Article 7, Table 2 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

Table 3. Repealed

Historical Note

Repealed Table 3 recodified from repealed Table 3 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 8. RESERVED

ARTICLE 9. GASOLINE VAPOR CONTROL FOR SITES WITH BOTH STAGE I AND STAGE II VAPOR RECOVERY SYSTEMS

R3-7-901. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:

1. Appendix J.5 of Technical Guidance – Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities, Vol. II: Appendices, November 1991 edition (EPA-450/3-91-022b), published by the U.S. Environmental Protection Agency, Office of Air Quality, Planning and Standards, Research Triangle Park, North Carolina 27711.
2. *San Diego County Air Pollution Control District Test Procedure TP-96-1*, March 1996, Third Revision, Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123-1096.
3. The following CARB test procedures:
   a. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.4, Determination of Dynamic Pressure Performance of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

b. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.5, Determination (by Volume Meter) of Air to Liquid Volume Ratio of Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
c. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2C, Determination of Spillage of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
d. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.6, Determination of Liquid Removal of Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
e. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.2B, Determination of Flow Versus Pressure for Equipment in Phase II Vapor Recovery Systems of Dispensing Facilities, April 12, 1996 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
h. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
i California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

4. Petroleum Equipment Institute, Recommended Practices for Installation and Testing of Vapor-Recovery Systems at Vehicle-Fueling Sites, PEI/RP300-09, 2009 edition, Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma 74101-2380.

Historical Note

New Section R3-7-901 recodified from Section R20-2-901 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-902. Exemptions

A. The owner or operator of a gasoline dispensing site that has decommissioned the site's stage II vapor recovery system in accordance with R3-7-913 or that is subject to A.R.S. § 41-2132, is exempt from the provisions of this Article but shall comply with the provisions of Article 10.

B. The owner or operator of a gasoline dispensing site that has a throughput that does not exceed the throughput specified in A.R.S. § 41-2135(B) may obtain an exemption by submitting a written request to the Department attesting that throughput at the gasoline dispensing site is not in excess of that specified in A.R.S. § 41-2135(B). By the 15th of each month, beginning the month after the Department approves the exemption, the person shall submit a written throughput report to the Department. If a person does not timely file a monthly throughput report or if a monthly throughput report reflects that the exemption limit is exceeded, the Department deems the exemption void.

C. To obtain an independent small business marketer exemption, a person shall derive at least 50 percent of the person's annual income from the sale of gasoline at each gasoline dispensing site for which an exemption is requested. The person shall submit a written request for exemption to the Department. The Department shall determine the percentage of total annual income represented by the sale of gasoline on the basis of the person's state and federal gross income for the preceding year for income tax purposes. The following items are excluded from income computations:

1. Purchase and sale of diesel fuel, and
2. State lottery sales net commissions and incentives.

D. Motor raceways, motor vehicle proving grounds, and marine and aircraft fueling facilities are exempt from stage II vapor recovery requirements.

Historical Note

New Section R3-7-902 recodified from Section R20-2-902 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-903. Equipment and Installation

A. A person subject to A.R.S. § 41-2135 shall install, maintain, and operate a stage I and stage II vapor recovery system and component as specified in this Article until the stage II vapor recovery system is decommissioned in accordance with R3-7-913.

B. The Department shall reject a vapor recovery system or component from future installation if:

1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-901; or
3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

C. The piping of both a stage I and stage II vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I and stage II vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under R3-7-904.

D. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

E. A stage I spill containment may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid. A stage II vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

Historical Note
New Section R3-7-903 recodified from Section R20-2-903 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-904. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a vapor recovery system or to make a major modification of an existing vapor recovery system or component before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage II vapor recovery system;
2. Adding or replacing underground piping, vapor piping within a dispenser, or a dispenser at an existing vapor recovery site unless the dispenser replacement is necessary due to unforeseen damage to the existing dispenser; or
3. Replacing a Department-approved stage II vapor recovery system of one certified configuration with an approved stage II vapor recovery system of a different certified configuration.

B. A person shall file with the Department a written change order to an authority to construct plan approval on a form provided by the Department if a modification of the approved vapor recovery system or component is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
1. The name, address, and phone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I or stage II vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all equipment and piping detail; and
5. The application fee specified under R3-7-906.

D. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
2. Construction of a stage II vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

E. The Department shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

F. If excavation is involved, the Department may visually inspect the stage II underground piping of a gasoline dispensing site before the pipeline is buried, for compliance with the authority to construct plan approval. A person who owns or operates a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete. The Department shall require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

G. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval, if an initial inspection is scheduled according to R3-7-905.

H. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

Historical Note
New Section R3-7-904 recodified from Section R20-2-904 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-905. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval. The inspection shall be witnessed by the Department at a time approved by the Department and include any of the following relevant to the specific vapor recovery system installed:
1. A dynamic pressure performance test from each dispenser for each product grade to its associated underground storage tank;
2. A pressure decay test for each vapor control system including nozzles, underground storage tanks, and tank vents. This test shall be performed with caps removed from stage I fill and vapor risers. If the pressure decay test in R3-7-901(1) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 10 percent or greater than 60 percent vapor space. If the pressure decay test in R3-7-901(2) is used, the Department shall fail the vapor recovery system if gasoline storage tanks have less than 15 percent or more than 30,000 gallons vapor space. The Department shall compute combined tank vapor space for manifolded systems;
3. Communication from dispenser to tanks for each product, using the San Diego TP-96-1 and CARB TP-201.4 test procedures;
4. Air to liquid volume ratio by volume meter of a vapor recovery system, using CARB TP-201.5 or CARB-endorsed equivalent procedures to determine air to liquid (A/L) ratios;
5. Spillage of a stage II vapor recovery system, using the CARB TP-201.2C procedure;
6. Liquid removal of a stage II vapor recovery system, using the CARB TP-201.6 procedure;
7. Flow versus pressure for components in a stage II vapor recovery system, using the CARB TP-201.2B procedure; and

8. Procedures specified by a manufacturer for testing the vapor recovery system.

B. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.

1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it approves the inspection date and time.

Historical Note

New Section R3-7-905 recodified from Section R20-2-905 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-906. Fee

The authority to construct plan approval fee is $250.

Historical Note

New Section R3-7-906 recodified from Section R20-2-906 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-907. Operation

A. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall not transfer or permit the transfer of gasoline into any motor vehicle fuel tank unless stage II vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 41, Chapter 15, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall operate the stage II vapor recovery system and associated components in compliance with the CARB certification for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage II vapor recovery shall inspect the system and its components daily. Daily inspections shall include all nozzles, hoses with connecting hardware, stage I fittings, and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage II vapor recovery system or component if one or more of the following system or component defects occur:

1. A faceplate or facecone of a balance system nozzle does not make a good seal with a vehicle fill tube, or the accumulated damage to the faceplate or facecone is 1/4 or more of its circumference. These conditions also apply to a vacuum assist system that has a nozzle with a bellows and faceplate that seal with a vehicle fill pipe;
2. When more than 1/4 of the cone is missing for vapor assist systems having bellowless nozzles with flexible vapor deflecting cones;
3. A nozzle bellows has a triangular tear measuring 1/2 inch or more to a side, a hole measuring 1/2 inch or more in diameter, or a slit or tear measuring one inch or more in length;
4. A nozzle bellows is loosely attached to the nozzle body, attached by means other than that approved by the manufacturer, or a vapor check valve is frozen in the open position due to impaired motion of the bellows;
5. Any nozzle liquid shut-off mechanism malfunctions in any manner, the spring or latching knurl for holding the nozzle in place during vehicle fueling is damaged or missing, or a nozzle is without a functioning hold-open latch;
6. Any nozzle with a defective vapor check valve, or hose having a disengaged breakaway, when all other nozzles are capable of delivering the same grade of fuel from the same turbine pump;
7. Any vacuum assist nozzle having less than the acceptable number of open vapor collection holes specified by CARB for the particular model of nozzle in service, the nozzle spout rocks or rotates more than 1/8 inch, the spout shows heavy wear with the tip damaged in a way that the largest axis exceeds .84 inch, or the plastic insert in the tip of the spout is loose;
8. Any nozzle with a dispensing rate greater than 10 gallons per minute when only one nozzle associated with the product supply pump is operating, or a flow restrictor is improperly installed, leaking, or non-CARB approved;
9. Any nozzle with a physically damaged breakaway or a breakaway showing evidence of product leakage, or a breakaway not approved for the installed system;
10. A dispenser mounted vacuum pump that is not functioning;
11. Any vapor recovery hose and, as applicable, the accompanying whip hose, that:
    a. Is crimped, kinked, flattened, or damaged in any manner that constricts the return flow of vapor;
    b. For a balance hose, has any slits or tears greater than 1/4 inch in length, perforations greater than 1/8 inch in diameter, or assist system hoses that are cut, torn, or badly worn so as to cause a possible fuel leak;
    c. Does not fully retract, for approved dispenser configurations using hose retractors, or a balance system hose that exceeds the 10-inch loop requirement where required, or for a hose length that allows a balance hose to touch the ground, or for a vacuum assist hose having more than 6 inches in contact with the ground;
    d. Does not swivel at the hose/nozzle connection; or
    e. Does not have a required internal liquid pick-up or the hose with liquid pick-up is improperly assembled for the pick-up to properly function;
12. Tank vent pipes that are not the proper height, or are not properly capped with approved pressure and vacuum vent valve settings, or where required, vent pipes that do not meet the CARB-specified paint color code for the installed system;

13. The stage I installation is not properly installed or maintained, in that:
    a. Spill containment buckets are cracked, rusted, the sidewalls are not attached or otherwise improperly installed, or spill containment buckets are not clean and empty of liquid, or there are non-functioning drain valves, or drain valves that do not seal;
    b. A fill adaptor collar or vapor poppet (drybreak) that is loose or damaged, or with a fill or vapor cap that is not installed, is missing, broken, or without gaskets;
    c. Coaxial stage I that is not equipped with a functioning CARB-approved poppeted fill tube, or the coaxial cap is not installed, is missing, broken, or without gaskets; or
    d. A fill tube is missing, not sealed, has holes, broken or damaged overfill preventors, or if the high point of the bottom opening is more than 6 inches above the tank bottom;
14. The tank rise cap with instrument lead wire for an electronic monitoring system is not tightly installed, or any other tank riser is not securely sealed and capped;
15. The under-dispenser vapor recovery piping is not securely intact or is crimped, does not slope to the underground vapor pipe riser, hoses used for connection are deteriorated or not approved for use with gasoline, resettable impact type shear valves are closed, or there is any other valve or restriction to impede the vapor path;
16. An above-ground storage tank that does not display a permanently attached UL approval plaque;
17. A vacuum assist system with an inoperative central vacuum unit;
18. A vacuum assist system with an inoperative vapor processing (burner) unit;
19. A vacuum assist system with a monitoring system certified by CARB or the authority to construct that is not operational or malfunctions; or
20. Any other component identified in the diagrams, exhibits, attachments or other documents that are certified by CARB or required by the authority to construct for that system is missing, disconnected, or malfunctioning.

E. The owner or operator of a gasoline dispensing site shall inspect for the presence and proper placement of public information signs required by A.R.S. § 41- 2135(E) and this Article.

F. For a stage II vacuum assist vapor recovery system, the owner or operator of a gasoline dispensing site shall immediately place damaged or malfunctioning equipment out of service and shall notify the Department by fax or e-mail no more than one day after the malfunction of a central vacuum or processor unit. Once the equipment or system is repaired, the owner or operator shall provide written notice within five days of the repair to the Department.

G. For proper operation of a stage I system under A.R.S. § 41-2132(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

H. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

Historical Note

New Section R3-7-907 recodified from Section R20-2-907 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-908. Training and Public Education

A. Each owner or operator of a gasoline dispensing site using stage II vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training on-site and make the documentation available to the Department on request.

B. In addition to the information required in A.R.S. § 41-2135(E), an owner or operator of a gasoline dispensing site with stage II vapor recovery shall display a Department telephone number that the public can call to report nozzle or other equipment problems. The owner or operator shall place the required information on each face of each gasoline dispenser. The headings shall be at least 3/8 inches and shall be readable from up to 3 feet away for decal signs, and from up to 6 feet away for permanent (non-decal) signs. Decals shall be located on the upper 60% of each face of each dispenser.

Historical Note

New Section R3-7-908 recodified from Section R20-2-908 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-909. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain daily records of the inspections done under this Article.

B. The owner or operator of a gasoline dispensing site employing stage II vapor recovery shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage II equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 41-2135(B) from requirements to install and operate stage II vapor recovery equipment, shall maintain a log at the site showing monthly throughputs. The owner or operator shall submit throughput records to the Department as required under R3-7-902(B). If any throughput requirement provided in A.R.S. § 412135(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall within six months after the end of the month the throughput is exceeded, install and operate a stage II vapor recovery system conforming to this Article.

D. The owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

Historical Note

New Section R3-7-909 recodified from Section R20-2-909 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-910. Annual Inspection and Testing

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspec-

tion. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-905(A)(1) through (8) that pertain to the specific vapor recovery system installed.

C. If there is a difference between a testing contractor's and the Department's test results, the Department's test results prevail.

D. If a site fails to pass any of the tests required by subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all appropriate tests in subsection (B).

E. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

F. A registered service representative shall perform all tests according to Article 9 and any other vapor recovery procedure that the Department issues to registered service agencies.

G. A person who cancels a witnessed inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

Historical Note

New Section R3-7-910 recodified from Section R20-2-910 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-911. Compliance Inspections

The Department shall not announce when it plans to conduct a compliance inspection of a stage I or stage II vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 41, Chapter 15, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-910.

Historical Note

New Section R3-7-911 recodified from Section R20-2-911 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-912. Enforcement

If the Department finds that a stage II vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 41, Chapter 15, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 41, Chapter 15 and this Chapter before the vapor recovery system or component is placed in service.

Historical Note

New Section R3-7-912 recodified from Section R20-2-912 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-913. Stage II Decommissioning

A. The owner or operator of a gasoline dispensing site with a stage II vapor recovery system shall decommission the stage II vapor recovery system in accordance with the following schedule:

1. If the owner or operator holds a license issued by the Department numbered BMF 13676 or less, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2016 and September 30, 2017; or
2. If the owner or operator holds a license issued by the Department numbered BMF 13677 or more, the owner or operator shall decommission the stage II vapor recovery system between October 1, 2017 and September 30, 2018.

B. Request for alternate decommissioning plan. The following owners or operators may submit an alternate decommissioning plan requesting to decommission the stage II vapor recovery systems at a time other than would be required under subsection (A)(1) or (A)(2) but no sooner than October 1, 2016 and no later than September 30, 2018. The owner or operator shall submit the alternate decommissioning plan to the Department for approval no later than December 31, 2015.

1. An owner or operator that holds licenses issued by the Department for three or fewer gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsections (C)(1) through (4); and
2. An owner or operator that holds licenses issued by the Department for four or more gasoline dispensing sites if all the licenses are issued in the same business name and mailing address. The owner or operator shall ensure that the alternate decommissioning plan includes the information specified in subsection (C).

C. An owner or operator that submits a request for approval of an alternate decommissioning plan shall include the following information as specified under subsection (B):

1. The business name and mailing address on all licenses;
2. The name and telephone number of an individual with whom the Department can communicate;
3. The license number and address of each gasoline dispensing site and a statement of whether the owner or operator proposes to decommission each vapor recovery system between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018;
4. A statement of whether all gasoline dispensers at the gasoline dispensing site will be replaced and if so, whether the owner or operator proposes to replace the gasoline dispensers between October 1, 2016 and September 30, 2017, or October 1, 2017 and September 30, 2018; and
5. If the owner or operator owns four or more gasoline dispensing sites, an alternate decommissioning plan that includes:
   a. The license numbers and addresses of 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2016 and September 30, 2017; and
   b. The license numbers and addresses of the remaining 50 percent of the gasoline dispensing sites at which the vapor recovery systems will be decommissioned between October 1, 2017 and September 30, 2018.

D. The Department shall approve or reject, on a first-come-first-served basis, an alternate decommissioning plan within three months after the alternate decommissioning plan is submitted. The Department shall allow decommissioning of stage II vapor recovery equipment at the time gasoline dispensers are

replaced as indicated on the request for approval under subsection (C)(4). The Department may reject an alternate decommissioning plan if the information required under subsection (B) is not provided or if the year requested for decommissioning already has more than 60 percent of all gasoline dispensing sites scheduled for decommissioning;

E. The owner or operator of a gasoline dispensing site that is exempt under R3-7-902 shall decommission the site any time between October 1, 2016, and September 30, 2018;

F. The owner or operator of a gasoline dispensing site shall ensure that a Notice of Intent, using a form or format provided by the Department, is submitted to the Department at least 10 days before the planned decommissioning and includes the following information:
1. Name of the owner or operator of the gasoline dispensing site,
2. Address of the gasoline dispensing site,
3. Name of the decommissioning contractor,
4. Decommissioning dates,
5. Name of the vapor testing registered service representative, and
6. A statement indicating whether all gasoline dispensers at the gasoline dispensing site are being replaced.

G. If any of the information provided under subsection (F) changes, the owner or operator shall ensure that the Department receives the changed information at least 24 hours before the scheduled start of decommissioning.

H. The owner or operator of a gasoline dispensing site shall ensure that all stage II vapor recovery systems are decommissioned according to the material incorporated by reference in R3-7-901(4) with the following exceptions:
1. Liquid shall be purged from the vapor piping following disconnection in section 14.6.6;
2. Vapor piping that is not disconnected from the tank top in accordance with section 14.6.7 shall be disconnected in the future if construction involving excavation that renders the piping accessible is performed; and
3. The pressure decay test conducted under section 14.6.12 shall meet the requirements in R3-7-1005(A)(1).

I. The decommissioning contractor shall:
1. Complete a Decommissioning Checklist using a form or format provided by the Department,
2. Provide a copy of the completed Decommissioning Checklist to the owner or operator of the gasoline dispensing site at the time of decommissioning, and
3. Submit a copy of the completed Decommissioning Checklist to the Department within 10 days after decommissioning of the stage II vapor recovery system is complete. Decommissioning of a stage II vapor recovery system is complete on the date and at the time when the gasoline dispensing site resumes sales of motor fuel following decommissioning.

J. A gasoline dispensing site with a stage II vapor recovery system that is decommissioned is exempt from the annual inspection and testing required under R3-7-910 but shall be subject to the initial inspection and testing prescribed under R3-7-1005 within 60 days after decommissioning is complete.

K. The requirements in Article 10 apply to all gasoline dispensing sites at which stage II vapor recovery systems have been decommissioned.

L. The Department shall place out-of-service a gasoline dispensing site at which a stage II vapor recovery system is not decommissioned according to this Section until the gasoline dispensing site is decommissioned and impose civil penalties under A.R.S. § 41-2115 on the owner or operator of the gasoline dispensing site.

Historical Note
New Section R3-7-913 recodified from Section R20-2-913 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

ARTICLE 10. STAGE I VAPOR RECOVERY

R3-7-1001. Material Incorporated by Reference

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:
1. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
2. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
3. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1D, Leak Rate of Drop Tube Overfill Protection Devices and Spill Container Drain Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
4. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
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6. California Environmental Protection Agency, Air Resources Board, Vapor Recovery Test Procedure TP-201.3C, Determination of Vapor Piping Connections to Underground Gasoline Storage Tanks (Tie-Tank Test), March 17, 1999 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

Historical Note
New Section R3-7-1001 recodified from Section R20-2-1001 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1002. Exemptions

A. The owner or operator of a gasoline dispensing site at which the site's stage II vapor recovery system has not been decommissioned in accordance with R3-7-913 is exempt from the provisions of this Article but shall comply with the provisions of Article 9.

B. An owner or operator of a gasoline dispensing site with a gasoline throughput that does not exceed that specified in A.R.S. § 41-2132(B) may file for an exemption from this Article. To obtain an exemption, the owner or operator of the gasoline dispensing site shall submit an annual throughput report to the Department, using a form prescribed by the Department, no later than March 30 of each year and attest to the throughput

during each month of the previous calendar year. If the owner or operator fails to file an annual throughput report timely or if the annual throughput report indicates the exemption limit specified in A.R.S. § 41-2132(B) was exceeded, the Department shall deem the exemption void.

Historical Note
New Section R3-7-1002 recodified from Section R20-2-1002 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1003. Equipment and Installation

A. The Department shall reject a vapor recovery system or component from future installation if:
1. Federal regulations prohibit its use;
2. The vapor recovery system or component does not meet the manufacturer's specifications as certified by CARB using test methods approved in R3-7-1001; or
3. The vapor recovery system or component fails greater than 20% of Department inspections for that system or component or the Department receives equivalent failure results from a vapor recovery registered service agency or from another jurisdiction's vapor recovery program, and the Department provides at least 30 days public notice of its proposed rejection.

B. The piping of a stage I vapor recovery system shall be designed and constructed as certified by CARB for that specific vapor recovery system. A person shall not alter a stage I vapor recovery system or component from the CARB-certified configuration without obtaining Department approval under R3-7-1004. All components installed with the stage I vapor recovery system shall be certified by CARB or approved by the Department as required under A.R.S. § 41-2132.

C. If Department inspection or test data reveal a deficiency in a fitting, assembly, or component that cannot be permanently corrected, the deficient fitting, assembly, or component shall not be used in Arizona.

D. A stage I liquid or vapor spill containment bucket may have a plugged drain rather than a drain valve if a hand-operated pump is kept onsite for draining entrapped liquid.

E. A stage I vapor recovery system shall have pressure/vacuum (P/V) threaded valves on top of the vent lines for gasoline storage tanks.

Historical Note
New Section R3-7-1003 recodified from Section R20-2-1003 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1004. Application Requirements and Process for Authority to Construct Plan Approval

A. A person shall not begin to construct a site requiring a stage I vapor recovery system or to make a major modification of an existing vapor recovery system before obtaining approval of an authority to construct plan application. A major modification is:
1. Adding or replacing a gasoline storage tank that is equipped with a Department approved stage I vapor recovery system;
2. Modifying, adding, or replacing underground vent piping; or
3. Conducting construction under R3-7-913(H)(2).

B. A person shall file with the Department a written change order, using a form provided by the Department, to obtain a modification of the approved vapor recovery system or component if a modification is needed after the Department issues an authority to construct plan approval. The person shall not make any modification until the Department approves the change order.

C. To obtain an authority to construct plan approval, a person shall submit to the Department, on a form provided by the Department, the following:
1. The name, address, and telephone number of any owner, operator, and proposed contractor, if known;
2. The name of the stage I vapor recovery system or component to be installed along with the CARB certification for that system or component;
3. The street address of the site where construction or major modification will take place with an estimated timetable for construction or modification;
4. A copy of a blueprint or scaled site plan for the vapor recovery system or component including all stage I vapor recovery equipment and stage I vapor recovery piping detail; and
5. The application fee specified under R3-7-1006.

D. A person shall ensure that an installed or modified stage I vapor recovery system meets the following requirements:
1. Has CARB-certified product and vapor adaptors that prevent loosening or over-tightening of the stage I product and vapor adaptors;
2. Consists of a two-point stage I system with separate fill and vapor connection points. Coaxial stage I vapor recovery systems shall not be used;
3. Has a submerged fill pipe that has the fill pipe's highest point of discharge no more than six inches from the tank bottom;
4. Has no tank containing motor fuel other than gasoline connected to the vapor piping;
5. Uses cement that is resistant to deterioration from exposure to water, hydrocarbons, and alcohol to join all pipes;
6. Has tank vent pipes that extend at least 12 feet above the elevation of the stage I fill points;
7. Has tank vent pipes with a minimum inside diameter of:
   a. Two inches if the pipe is not manifolded, or
   b. Three inches from the point of manifold if the pipe is manifolded;
8. Has pressure vacuum vent valves that are attached to the tank vent pipes by a threaded connection;
9. If a gasoline tank is installed in an enclosed vault, has an emergency vent in addition to the pressure vacuum vent valve required under subsection (D)(8);
10. Has a one-eighth inch threaded tap on the vent pipe between six and eight feet above ground level;
11. Has risers into gasoline storage tanks that are capped with UL-approved caps;
12. Has lead wires for instrumentation that pass through a leak-tight grommet with a compression fitting suitable for exposure to gasoline vapors;
13. Has storage tank vent pipes and fill and vapor manhole tops that are painted a color that minimizes solar gain and has a reflective effectiveness of at least 55 percent. Reflectivity shall be determined by visually comparing the paint with paint-color cards obtained from a paint manufacturer that uses the Master Pallet Notation to specify the paint color (i.e. 58YY *88*/180 where the number in italics is the paint reflectivity). Examples of colors have a reflective effectiveness of at least 55 percent include, but are not limited to, yellow, light gray, aluminum, tan, red iron oxide, cream or pale blue, light green, glossy gray, light blue, light pink, light cream, white, silver, beige, tin plate, and mirrored finish. A manhole cover that is color coded for product identification is exempt from this subsection; and

14. Complies with other requirements outlined in the authority to construct permit.

E. After review and approval of the authority to construct plan, the Department shall issue the authority to construct plan approval and mail, fax, or e-mail the plan approval to the address indicated on the application.
1. A copy of the authority to construct plan approval shall be maintained at the facility during construction so that it is accessible for Department review.
2. Construction of a stage I vapor recovery system or component at a site not having an approved authority to construct plan, shall be stopped and no further installation work done until an authority to construct plan approval is obtained.
3. An authority to construct plan approval is not transferable.

F. The Department shall deny an authority to construct plan for any of the following reasons:
1. Providing incomplete, false, or misleading information; or
2. Failing to meet the requirements stated in this Chapter.

G. If excavation is involved, the Department may visually inspect the stage I underground piping of a gasoline dispensing site before the piping is buried for compliance with the authority to construct plan approval. The owner or operator of a vapor recovery system or component shall give the Department notice by fax or e-mail at least two business days before the underground piping is complete to schedule the inspection. The Department may require the owner or operator to excavate all piping not inspected before burial if the owner or operator does not give the required two business days' notice.

H. After construction is complete, a person who has a valid authority to construct plan approval may dispense gasoline for up to 90 days before final approval if an initial inspection is scheduled according to R3-7-1005.

I. An authority to construct plan approval expires one year from the date of issue or the completion of construction, whichever is sooner.

Historical Note
New Section R3-7-1004 recodified from Section R20-2-1004 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1005. Initial Inspection and Testing

A. Within 10 days after beginning the dispensing of gasoline at a site that requires an authority to construct plan approval, a person shall provide the Department with a written certification of completion by the contractor and schedule an inspection that includes tests and acceptance criteria specified in the authority to construct plan approval and this subsection. The inspection shall be witnessed by the Department at a time approved by the Department and include the following tests:
1. A pressure decay test for each vapor control system including underground storage tanks and tank vents using CARB TP-201.3 test procedures. All test procedures pertaining to stage I vapor recovery systems shall be followed except the post-test procedures in section 8 and the calculations in section 9 of the CARB TP-201.3 test procedures. The compliance status of the site shall be determined by comparing the final five-minute pressure with the minimum allowable final pressure in Table 1. A calculated ullage exceeding that listed in Table 1 shall be rounded up to the next higher ullage volume in the table;
2. A test of each pressure vacuum vent valve using CARB TP-201.1E test procedures;
3. A Tie-Tank test using CARB TP-201.3C test procedure; and
4. Procedures specified by a manufacturer or CARB for testing the vapor recovery system.

B. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

C. If a site fails to pass any of the tests required by subsection (A), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all the appropriate tests in subsection (A).

D. A person who cancels an initial inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the inspection within 10 business days after this notification. The Department shall take enforcement action if a person fails to comply with this Section.

E. A person shall notify the Department when a vapor recovery system or component is repaired after failing an initial inspection. A registered service representative shall not proceed with a reinspection until the Department approves the reinspection date and time.

F. If a registered service representative does not start an initial inspection pressure decay test within 30 minutes of the scheduled start time, the Department shall fail the initial inspection of that site.

G. If a person cancels an initial inspection, the person shall reschedule the inspection within 90 days from the date gasoline was first dispensed.
1. The Department shall take enforcement action if the person fails to timely reschedule the inspection.
2. The registered service agency shall notify the Department in writing at least 10 business days before the inspection of the time, date, and location of the inspection.
3. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the inspection date and time.

Historical Note
New Section R3-7-1005 recodified from Section R20-2-1005 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1006. Fee

The authority to construct plan approval fee is $250.

Historical Note
New Section R3-7-1006 recodified from Section R20-2-1006 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1007. Operation

A. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall not transfer or permit the transfer of gasoline into any gasoline storage tank subject to this Article unless stage I vapor recovery equipment is installed, maintained, operating, and being used according to the requirements of A.R.S. Title 41, Chapter 15, Article 7, and this Article.

B. The owner or operator of a gasoline dispensing site with stage I vapor recovery shall operate the stage I vapor recovery system and associated components in compliance with the CARB certification or Department approval under A.R.S. § 41-2132 for that system and these rules.

C. The owner or operator of a gasoline dispensing site with stage I vapor recovery located in area A shall inspect the system and its components at least once every seven days. The inspections shall include all stage I fittings and spill containment.

D. The owner or operator of a gasoline dispensing site shall immediately stop using a stage I vapor recovery system or

component if one or more of the following system or component defects occur:

1. Tank vent pipes are not the proper height or are not properly capped with approved pressure and vacuum vent valves;
2. Vent pipes do not meet the CARB-specified paint color code specified in R3-7-1004(D)(13);
3. The stage I vapor recovery system is not properly installed or maintained as evidenced by the following:
   a. Spill containment buckets are cracked, rusted, or not clean and empty of liquid; sidewalls are not attached or are otherwise improperly installed; and drain valves are non-functioning or do not seal;
   b. A fill adaptor collar or vapor poppet (drybreak) is loose, damaged, or has a fill or vapor cap that is not installed or is missing, broken, not securely attached, or missing gaskets;
   c. Coaxial stage I is not equipped with a functioning CARB-approved poppeted fill tube or the coaxial cap is not installed or is missing, broken, not securely attached, or missing gaskets; or
   d. A fill tube is missing, broken, or not sealed; has holes or damaged overfill prevention; or the high point of the bottom opening is more than six inches above the tank bottom;
4. The tank rise cap with instrument lead wire for an electronic monitoring system is not installed tightly or any other tank riser is not sealed and capped securely;
5. An above-ground storage tank does not display a permanently attached UL approval plaque; or
6. Any other component identified in the diagrams, exhibits, attachments, or other documents and certified by CARB or required by the authority to construct permit for that system is missing, disconnected, or malfunctioning.

E. For proper operation of a stage I system under A.R.S. § 41-2132(C)(4), the owner or operator of a gasoline dispensing site shall recover vapors during pump-out from a gasoline storage tank to a mobile transporter.

F. The owner or operator of a gasoline dispensing site shall ensure that any underground tightness test is conducted in a manner that prevents gasoline vapors being emitted to the atmosphere.

Historical Note

New Section R3-7-1007 recodified from Section R20-2-1007 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1008. Training and Public Education

Each owner or operator of a gasoline dispensing site using stage I vapor recovery shall obtain adequate training and written instructions to enable the system to be installed, operated, and maintained properly in accordance with the manufacturer's specifications and CARB certification. The owner or operator shall maintain documentation of this training on-site and make the documentation available to the Department on request.

Historical Note

New Section R3-7-1008 recodified from Section R20-2-1008 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1009. Recordkeeping and Reporting

A. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain records of the inspections done under R3-7-1007.

B. The owner or operator of a gasoline dispensing site employing stage I vapor recovery in area A shall maintain a log and related records of all regularly scheduled maintenance and any repairs that have been made to stage I equipment.

C. The owner or operator of a gasoline dispensing site that is exempt under A.R.S. § 41-2132(B) from requirements to install and operate stage I vapor recovery equipment shall maintain a log at the site showing monthly throughputs. The owner or operator shall make the log available to the Department within 24 hours after request. The owner or operator shall submit to the Department the throughput information required under R3-7-1002(B). If any throughput requirement provided in A.R.S. § 412132(B) and this Article is exceeded for any month, the owner or operator shall notify the Department in writing within 30 days. The owner or operator shall, within six months after the end of the month the throughput is exceeded, install and operate a stage I vapor recovery system conforming to this Article. If a stage I vapor recovery system is already installed, the owner or operator shall have the system tested under R3-7-1010 within 30 days after the end of the month in which the throughput was exceeded.

D. The owner or operator of a gasoline dispensing site that has decommissioned a stage II vapor recovery system under R3-7-913 shall maintain a copy of the decommissioning checklist required under R3-7-913(I) for three years.

E. Except as specified in subsection (D), the owner or operator of a gasoline dispensing site shall keep all records required by this Article at the gasoline dispensing site for at least one year and shall make these records available to the Department upon request.

Historical Note

New Section R3-7-1009 recodified from Section R20-2-1009 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1010. Annual Testing and Inspection

A. A person shall ensure that an annual inspection is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, whether it approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

B. The annual inspection shall include the tests defined in R3-7-1005(A)(1) through (3) that pertain to the specific vapor recovery system installed.

C. To verify proper operation of a vapor recovery system, the Department may perform or may require registered service representatives to perform additional tests under R3-7-1005(A)(4) during the annual inspection and testing. The Department shall provide registered service agencies with six months' notice before requiring additional annual testing under R3-7-1005(A)(4).

D. If there is a difference between a testing contractor's test results and the Department's test results, the Department's test results prevail.

E. If a site fails to pass any of the tests required under subsection (B), the affected vapor recovery system or component shall remain out-of-service until the vapor recovery system and component pass all tests required under subsection (B).

F. After an annual inspection begins, a person shall not make a repair to the vapor recovery system or component until the results of the inspection are recorded.

G. A person shall notify the Department when a vapor recovery system or component is repaired after failing an annual inspection. A registered service representative shall not conduct a reinspection until the Department approves the reinspection date and time.

H. A registered service representative shall perform all tests according to this Article and any other vapor recovery procedure the Department issues to registered service agencies.

I. A person that cancels an annual inspection shall notify the Department by calling the Department's designated telephone number at least one hour before the scheduled inspection and shall reschedule the test to be completed by the annual inspection date. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by fax or e-mail, of its approval of the inspection date and time. The Department shall take enforcement action if a person does not comply with this subsection.

J. Gasoline dispensing sites located in area B are exempt from the annual inspection and testing requirements of this Section.

Historical Note
New Section R3-7-1010 recodified from Section R20-2-1010 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1011. Compliance Inspections and Additional Test Methods

The Department shall not announce when it plans to conduct a compliance inspection of a stage I vapor recovery system or component. If results of a compliance inspection reveal a violation of A.R.S. Title 41, Chapter 15, or this Article, the Department shall require the vapor recovery system or component to undergo an appropriate test as specified in R3-7-1010.

Historical Note
New Section R3-7-1011 recodified from Section R20-2-1011 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1012. Enforcement

If the Department finds that a stage I vapor recovery system or component is defective or non-compliant with one or more of the provisions of this Chapter or A.R.S. Title 41, Chapter 15, the Department shall issue to the owner or operator an administrative order and place a stop-sale, stop-use tag on the non-compliant vapor recovery system or component. The owner or operator may be required to schedule an inspection for a stage II vapor recovery system or component to ensure that it meets all requirements of A.R.S. Title 41, Chapter 15 and this Chapter before the vapor recovery system or component is placed in service.

Historical Note
New Section R3-7-1012 recodified from Section R20-2-1012 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

R3-7-1013. Stage II Vapor Recovery

If the Department identifies a gasoline dispensing site operating a stage II vapor recovery system within an ozone nonattainment area designated as moderate, serious, severe, or extreme by the EPA under section 107(d) of the Clean Air Act or in area A after September 30, 2018, the Department shall issue an administrative order and civil penalty under A.R.S. § 41-2115 and require that the stage II vapor recovery system be decommissioned within three months after identification. Each day the stage II vapor recovery system is not decommissioned after the time specified in the administrative order constitutes a separate violation for the purpose of calculating the civil penalty under A.R.S. § 41-2115.

Historical Note
New Section R3-7-1013 recodified from Section R20-2-1013 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

Table 1. Acceptability of Final System Pressure Results for Systems Tested Using TP-201.3

Ullage (gallons)	Minimum Pressure after Five Minutes (Inches Water Column)
500	0.73
550	0.80
600	0.87
650	0.93
700	0.98
750	1.03
800	1.07
850	1.11
900	1.15
950	1.18
1000	1.21
1200	1.32
1400	1.40
1600	1.46
1800	1.51
2000	1.56
2400	1.62
2600	1.65
2800	1.67
3000	1.69
3500	1.73
4000	1.76
4500	1.79
5000	1.81
6000	1.84
7000	1.86
8000	1.88
9000	1.89
10000	1.90
15000	1.93
20000	1.95
25000	1.96

Historical Note
Article 10, New Table 1 recodified from 20 A.A.C. 2, Article 10, Table 1 at 22 A.A.R. 2786, effective August 15, 2016 (Supp. 16-3).

3-3401. Definitions

In this chapter, unless the context otherwise requires:

1. "Area A" has the same meaning prescribed in section 49-541.

2. "Area B" has the same meaning prescribed in section 49-541.

3. "Area C" means that portion of Pinal county lying west of range 11 east, excluding that portion of the county lying within area A as defined in section 49-541 and that portion of the county within the jurisdiction of any Indian tribe, band, group or community that is recognized by the United States secretary of the interior and that exercises governmental authority within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

4. "Associate director" means the associate director of the division.

5. "Biodiesel" means a mono-alkyl ester that meets ASTM D6751.

6. "Biodiesel blend" means a motor fuel that is composed of biodiesel and diesel fuel and that is designated by the letter "B", followed by the numeric value of the volume percentage of biodiesel in the blend.

7. "Biofuel" means a solid, liquid or gaseous fuel that is derived from biomass and that can be used directly for heating or power or as a blend component in motor fuel.

8. "Biofuel blend" means a motor fuel that is composed of a biofuel, that is combined with a petroleum-based fuel and that is designated by the volume percentage of biofuel in the blend.

9. "Biomass" means biological material, such as plant or animal matter, excluding organic material that has been transformed by geological processes into substances such as coal or petroleum or derivatives thereof, that may be transformed into biofuel.

10. "Biomass-based diesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the United States environmental protection agency under 42 United States Code 7545 and includes fuel derived from animal wastes, including poultry wastes and other waste materials, municipal solid waste and sludge and oil derived from wastewater and the treatment of wastewater. Biomass-based diesel does not include biodiesel.

11. "Biomass-based diesel blend" means a blend of petroleum-based diesel fuel with biomass-based diesel.

12. "Certification" means the process of determining the accuracy of a commercial device to the standards of this state by a registered service representative or the division.

13. "Commercial device" means any weighing, measuring, metering or counting device that is used to determine the direct cost of things sold or offered or exposed for sale, or used to establish a fee for service if the cost is based on weight, measure or count, except that it does not include those devices used for in-house packaging, inventory control or law enforcement purposes.

14. "Commodity" means any merchandise, product or substance produced or distributed for sale to or use by others.

15. "Correct" as used in connection with weights and measures means conformance to all applicable requirements of this chapter.

16. "Diesel fuel" means a refined middle distillate that is used as a fuel in a compression-ignition internal combustion engine and that meets the specifications of ASTM D975.

17. "Division" means the weights and measures services division of the department.

18. "Ethanol flex fuel" means a fuel ethanol gasoline blend that meets the specifications of ASTM D5798 standard specification for ethanol fuel blends for flexible-fuel automotive spark-ignition engines.

19. "Fleet owner" means a registered owner or lessee of at least twenty-five vehicles.

20. "Gasoline" means a volatile, highly flammable liquid mixture of hydrocarbons that does not contain more than five one-hundredths grams of lead for each United States gallon, that is produced, refined, manufactured, blended, distilled or compounded from petroleum, natural gas, oil, shale oils or coal and other flammable liquids free from undissolved water, sediment or suspended matter, with or without additives, and that is commonly used as a fuel for spark-ignition internal combustion engines. Gasoline does not include diesel fuel or ethanol flex fuel.

21. "Gasoline provider" means any manufacturer of gasoline or any person who imports gasoline into a vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area

or any person who sells gasoline intended for ultimate consumption within a vehicle emissions control area. Gasoline provider does not mean a person with respect to a gasoline supplied or sold by the person to another person for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.

22. "Inspector" means a state official of the division.

23. "Liquid measuring device" means any meter, pump, tank, gauge or apparatus used for volumetrically determining the quantity of any internal combustion engine fuel, liquefied petroleum gas or low viscosity heating oil.

24. "Manufacturer's proving ground" means a facility whose sole purpose is to develop complete advanced vehicles for an automotive manufacturer.

25. "Misfuel" means the act of dispensing into the fuel tank of a motor vehicle a motor fuel that was not intended to be used in the engine of that motor vehicle.

26. "Motor fuel" means a petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, number one or number two diesel fuel or any grade of oxygenated gasoline typically used in the operation of a motor engine, including biodiesel blends, biofuel blends and ethanol flex fuels.

27. "Motor vehicle racing event" means a race that uses unlicensed vehicles designed and manufactured specifically for racing purposes and that is conducted on a public or private racecourse for the entertainment of the general public. Motor vehicle racing event includes practice, qualifying and demonstration laps conducted as part of the activities related to a motor vehicle race.

28. "Oxygenate" means any oxygen-containing ashless, organic compound, including aliphatic alcohols and aliphatic ethers, that may be used as a fuel or as a gasoline blending component and that is approved as a blending agent under the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

29. "Oxygenated fuel" means an unleaded motor fuel blend that consists primarily of gasoline and at least one and one-half percent by weight of one or more oxygenates and that has been blended consistent with the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

30. "Package" means any commodity enclosed in a container or wrapped in any manner in advance of sale in units suitable for either wholesale or retail trade.

31. "Person" means both the plural and the singular, as the case demands, and includes individuals, partnerships, corporations, companies, societies and associations.

32. "Product transfer document" means any bill of lading, loading ticket, manifest, delivery receipt, invoice or other documentation used on any occasion when a person transfers custody or title of motor fuel other than when motor fuel is sold or dispensed at a service station or fleet vehicle fueling facility.

33. "Public weighmaster" means any person who is engaged in any of the following:

(a) The business of weighing any object or thing for the public generally for hire or for internal use and issuing for that weighing a weight certificate intended to be accepted as an accurate weight on which a purchase or sale is to be based or on which a service fee is to be charged.

(b) The business of weighing for-hire motor vehicles, trailers or semitrailers and issuing weight certificates intended to be accepted as an accurate weight for the purpose of determining the amount of any tax, fee or other assessment on the vehicles.

34. "Reference standards" means the physical standards of the state that serve as the legal reference from which all other standards and weights and measures are derived.

35. "Registered service agency" means any agency, firm, company or corporation that for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and that has been issued a license by the division.

36. "Registered service representative" means any individual who for hire, award, commission or any other payment of any kind installs, services, repairs or reconditions a commercial device or tests or repairs vapor recovery systems or vapor recovery components and who has been issued a license by the division.

37. "Retail seller" means a person whose business purpose is to sell, expose or offer for sale or use any package or commodity by weight, measure or count.

38. "Secondary standards" means the physical standards that are traceable to the reference standards through comparisons, using acceptable laboratory procedures, and that are used in the enforcement of weights and measures laws and rules.

39. "Supplier" means any person that imports gasoline into a vehicle emissions control area by means of a pipeline or in truckload quantities for the person's own use within the vehicle emissions control area or any person that sells gasoline intended for ultimate consumption within a vehicle emissions control area, except that supplier does not mean a person with respect to gasoline supplied or sold by the person to another for resale to a retailer within a vehicle emissions control area or to a fleet owner for consumption within a vehicle emissions control area.

40. "Vehicle emissions control area" means a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, or any portion of area B or C, except that such an area does not include a manufacturer's proving ground that is located in the vehicle emissions control area.

41. "Weight" as used in connection with any commodity means net weight.

42. "Weights" or "measures", or both, means all weights, measures, meters or counters of every kind, instruments and devices for weighing, measuring, metering or counting and any appliance and accessories associated with any or all such instruments and devices.

3-3411. Standard weights and measures

The system of weights and measures in customary use in the United States and the metric system of weights and measures are jointly recognized, and either one or both of such systems shall be used for all commercial purposes in the state. The definitions of basic units of weight and measure, the tables of weight and measure, and weights and measures equivalents, as published by the national institute of standards and technology are recognized and shall govern weighing and measuring equipment and transactions in the state.

3-3412. Physical standards

Weights and measures that are traceable to the United States prototype standards supplied by the federal government, or approved as being satisfactory by the national institute of standards and technology, shall be the state reference standards of weights and measures and shall be maintained in such calibration as prescribed by the national institute of standards and technology. All secondary standards may be prescribed by

the associate director and shall be verified on initial receipt and as often thereafter as deemed necessary by the associate director.

3-3413. Technical requirements for commercial devices

The specifications, tolerances and other technical requirements for commercial devices as adopted by the national conference on weights and measures and published in national institute of standards and technology handbook 44, "specifications, tolerances, and other technical requirements for commercial weighing and measuring devices" shall apply to commercial weighing and measuring devices in the state. The edition of the national institute of standards and technology handbook 44 shall be determined by rule, pursuant to section 3-3414, subsection A, paragraph 4.

3-3414. Powers and duties; definition

A. The division shall:

1. Maintain custody of the state reference standards of weights and measures that are traceable to the United States prototype standards and that are supplied to the states by the federal government or that are otherwise approved as being satisfactory by the national institute of standards and technology.

2. Keep the state reference standards in a safe and suitable place in the metrology laboratory of the division and ensure that they are not removed from the laboratory except for repairs or for calibration as may be prescribed by the national institute of standards and technology.

3. Keep accurate records of all standards and equipment.

4. Adopt any rules necessary to carry out this chapter and adopt reasonable rules for the enforcement of this chapter. These rules have the force and effect of law and shall be adopted pursuant to title 41, chapter 6. In adopting these rules, the associate director shall consider, as far as is practicable, the requirements established by other states and by authority of the United States, except that rules shall not be made in conflict with this chapter.

5. Publish rules adopted pursuant to this chapter and issue appropriate copies at no cost to all new applicants for licensure and certification. Updated copies of the rules shall be distributed, on request, at no cost to the public.

6. Investigate complaints made to the division concerning violations of this chapter and, on its own initiative, conduct investigations it deems appropriate to develop information relating to prevailing procedures in commercial quantity determination and relating to possible violations of this chapter, in order to educate the public and regulated persons to encourage and promote the general objective of accuracy in the determination and representation of quantity in commercial transactions.

7. Establish labeling standards, establish standards of weight, measure or count and establish reasonable standards of fill for any packaged commodity, and may establish standards for open dating information.

8. Grant, pursuant to this chapter, exemptions from the licensing provisions of this chapter for weighing and measuring instruments, standards or devices when the ownership or use of the instrument or device is limited to federal, state or local government agencies in the performance of official functions. On request, the division may conduct inspections of instruments, standards or devices and shall charge a fee pursuant to section 3-3452.

9. Delegate to appropriate personnel any of the responsibilities of the associate director for the proper administration of this chapter.

10. Inspect and test weights and measures that are kept, offered or exposed for sale.

11. Inspect and test, to ascertain if they are correct, weights and measures commercially used either:

(a) In determining the weight, measure or count of commodities or things sold, or offered or exposed for sale, on the basis of weight, measure or count.

(b) In computing the basic charge or payment for services rendered on the basis of weight, measure or count.

12. Test, at random, commodities, weights and measures used in public institutions for which monies are appropriated by the legislature. The testing of commodities, weights and measures in public institutions includes items:

(a) That have historically been of short weight, measure or count.

(b) That have been found to be of short weight, measure or count by other jurisdictions.

(c) That are to be tested as part of a regional or national survey.

13. Test, approve for use and affix a seal of approval for use on all weights, measures and commercial devices manufactured in or brought into this state as it finds to be correct and shall reject and mark as rejected weights, measures and devices it finds to be incorrect. Weights, measures and devices that have been rejected may be seized by the division if not corrected within the time specified or if used or disposed of in a manner not specifically authorized. The division shall condemn and may seize weights, measures and devices that are found to be incorrect and that are not capable of being made correct.

14. Sample and test motor fuel that is stored, sold or exposed or offered for sale or that is stored for use by a fleet owner to determine whether the motor fuel meets the standards for motor fuel set forth in section 3-3433 and article 6 of this chapter and in any rule adopted by the associate director pursuant to this chapter.

15. Randomly witness tests on all mandated vapor recovery systems that are installed or operated in this state and, if the systems are determined to be in compliance with the law, approve those systems for use and reject, mark as rejected and stop the use of those systems that are determined not to be in compliance with the law.

16. Inspect facilities at which motor fuel is stored, sold or exposed or offered for sale to determine whether dispensing devices are properly labeled.

17. Publish and distribute to consumers and regulated persons weighing and measuring information.

18. Weigh, measure or inspect commodities that are kept, offered or exposed for sale, sold or in the process of delivery to determine whether they contain the amounts represented and whether they are kept, offered or exposed for sale in accordance with this chapter or rules adopted pursuant to this chapter. In carrying out this section, the associate director shall employ recognized sampling procedures, such as are designated in appropriate national institute of standards and technology handbooks and supplements to those handbooks, except as modified or rejected by rule.

19. Allow reasonable variations from the stated quantity of contents only after a commodity has entered intrastate commerce. These variations shall include those caused by loss or gain of moisture during the course of good distribution practice or by unavoidable deviations in good manufacturing practice.

20. Prescribe the standards of weight and measure and additional equipment methods of test and inspection to be employed in the enforcement of this chapter. The associate director may prescribe or provide the official test and inspection forms to be used in the enforcement of this chapter.

21. Apply to any court of competent jurisdiction for a temporary or permanent injunction restraining any person from violating this chapter.

22. Report to the governor on or before August 1 of each year and at such other times as may be required on the work accomplished under this chapter.

23. Subject to title 41, chapter 4, article 4, employ such personnel as needed to assist in administering this chapter.

24. Ensure that any information that is required to be filed with the division, that relates to the contents of motor fuels that are sold in this state and that is a trade secret as defined in section 49-201 is not disclosed.

25. Establish by rule labeling standards for tanks and containers of motor fuels.

B. The associate director may provide for the periodic examination and inspection of metering devices, including devices used to measure usage of electricity, natural gas or water by a consumer. Examination and inspection authority shall not apply to metering devices owned by federal, state or local government agencies unless requested by the government agency that owns the metering devices.

C. The associate director may establish standards for the presentation of cost-per-unit information. This subsection does not mandate the use of cost-per-unit information in connection with the sale of any standard packed commodity.

D. The associate director, when necessary to carry out this chapter, may adopt and enforce rules relating to quality standards for motor fuel, kerosene, oil, except used oil fuel, and hazardous waste fuel, lubricating oils, lubricants, antifreeze and other liquid or gaseous fuels. The associate director shall adopt rules to ensure that oxygenated fuels, as described in article 6 of this chapter, that are stored, used, sold or exposed or offered for use or sale are blended and stored, sold, exposed or offered in such a manner as to ensure that the oxygenated fuels are properly blended, that they meet the standards set forth in section 3-3433 and article 6 of this chapter, and in rules adopted pursuant to this chapter, and that dispensers at which the oxygenated fuels are dispensed are labeled as defined by rule of the division in such a manner as to notify persons of the type of oxygenated fuel being dispensed and the maximum percentage of oxygenate by volume contained in the oxygenated fuel. The associate director of

the division shall consult with the director of the department of environmental quality in adopting rules pursuant to this subsection.

E. Testing and inspection conducted pursuant to this chapter shall be done, to the extent practicable, without prior notice, by a random systematic method determined by the associate director or in response to a complaint by the public. The testing and inspection may be done by private persons and firms pursuant to contracts entered into by the associate director in accordance with title 41, chapter 23 or by a registered service agency or registered service representative licensed pursuant to section 3-3454. The associate director shall establish qualifications of persons and firms for selection for purposes of this subsection. The persons or firms conducting the testing and inspection shall immediately report to the division any violations of this chapter and incorrect weights, measures, devices, vapor recovery systems or vapor recovery components for investigation and enforcement by the division. A person or firm that tests or inspects a weight, measure, device, vapor recovery system or vapor recovery component that is rejected shall not correct the defect causing the rejection without the permission of the division.

F. During the course of an investigation or an enforcement action by the division, information regarding the complainant is confidential and is exempt from title 39, chapter 1, unless the complainant authorizes the information to be public.

G. For the purposes of the labeling requirements prescribed in this section, "oxygenated fuel" means a motor fuel blend containing 1.5 percent or more by weight of oxygen.

3-3415. Enforcement powers of the associate director, agents and inspectors

A. When necessary for the enforcement of this chapter and rules adopted pursuant to this chapter, the associate director or the associate director's agents and inspectors shall:

1. Enter any commercial, nonprofit business or governmental premises during normal operating hours, except that if the premises are not open to the public, the associate director or the associate director's agents and inspectors shall first present their credentials.

2. Issue stop-use, hold and removal orders with respect to any weights and measures commercially used, stop-sale, hold and removal orders with respect to any commodities, bulk commodities or motor fuel kept, offered or exposed for sale, stop-

use and hold orders with respect to a vapor recovery system or parts of a vapor recovery system and stop-use, stop-sale, hold and removal orders with respect to any motor fuel found to be in violation of this chapter or rules adopted pursuant to this chapter.

3. Seize for use as evidence, without formal warrant, any incorrect or unapproved weight, measure, package or commodity found to be used, retained, offered or exposed for sale or sold in violation of this chapter or rules adopted pursuant to this chapter.

4. Stop any commercial vehicle on reasonable cause to believe that the vehicle contains evidence of a violation of this chapter and, after presentment of the credentials of the associate director or the associate director's agents or inspectors, inspect the contents, require that the person in charge of the vehicle produce any documents in the person's possession concerning the contents and require the person to proceed with the vehicle to some specified place for inspection.

B. With respect to the enforcement of this chapter, the associate director or the associate director's agents or inspectors may issue a warning requiring corrective action or a citation to any violators of this chapter in accordance with section 13-3903.

C. The associate director or the associate director's agents or inspectors may apply for a special inspection warrant for inspection of real or personal property for the purpose of enforcement of this chapter. The special inspection warrant shall be issued as provided in section 49-433.

3-3416. State metrology laboratory; operation; standards; testing

A. The associate director shall establish and operate within the division the state metrology laboratory.

B. A commercial device shall not be approved for use in the state unless the design and construction comply with national institute of standards and technology requirements.

C. All commercial devices approved and certified shall meet the tolerance, design and construction requirements prescribed by the national institute of standards and technology.

D. All commercial devices that are determined unfit for approval shall be rejected without testing.

E. All weights, weight sets, measures, meters, counters or other devices that are used by registered service representatives shall show an indication of the approval date and jurisdiction issuing the approval.

F. All persons who install, service or repair commercial devices in this state shall submit the test equipment used to the division's metrology laboratory for approval at least annually. A certificate of approval that specifically identifies the test equipment and that is issued by another state laboratory may be accepted in lieu of submitting equipment if the other state laboratory is certified by the national institute of standards and technology.

G. All weights, measures, meters, counters or other devices shall be tested in the order they are scheduled in the laboratory unless arrangements for testing have been made in advance.

H. Work that is completed in the metrology laboratory shall be paid for pursuant to the fees prescribed in the rules of the division.

3-3417. Fees to state general fund

The associate director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected in the state general fund.

3-3418. Disposition of seized property

One hundred eighty days after the final disposition of an investigation and any ensuing enforcement action, the division may destroy those weights, measures or devices that are seized pursuant to section 3-3414 or 3-3415 or transfer the items to the department of administration for disposition as state surplus property pursuant to the direction of the department of administration, surplus property division.

3-3419. Consultation and training program; inspection training program

The associate director may develop and implement the following training programs:

1. A consultation and training program for entities regulated under this chapter that uses on-site visits, training and educational materials, and informational presentations to provide training and advice on interpreting, applying and complying, including alternative methods of complying, with the statutes, rules, regulations, standards or other matters relating to compliance with this chapter.

2. An inspection training program for division inspectors and employees to ensure that all inspections and tests provided for in this chapter are conducted in a consistent manner to the extent practicable.

3-3431. Sale of commodities

A. A person shall not sell or offer or expose for sale less than the quantity the person represents.

B. As a buyer, a person shall not take any more than the quantity the person represents when the person furnishes the weight or measure by means of which the quantity is determined.

C. A person shall not misrepresent the price of any commodity or service sold or offered, exposed or advertised for sale by weight, measure or count or represent the price in any manner calculated or tending to mislead or in any way deceive a person.

D. Except as otherwise provided by the associate director, commodities in liquid form shall be sold by liquid measure or by weight, and commodities not in liquid form shall be sold only by weight, by measure or by count, as long as the method of sale provides accurate quantity information.

E. If the quantity is determined by the seller, bulk sales shall be accompanied by a delivery ticket containing the following information unless exempted by rule:

1. The name and address of the vendor and purchaser.

2. The date delivered.

3. The quantity delivered and the quantity on which the price is based, if this differs from the delivered quantity.

4. The identity in the most descriptive terms commercially practicable, including any quality representation made in connection with the sale.

5. The count of individually wrapped packages, if more than one.

F. Except as otherwise provided in this chapter or by rules adopted pursuant to this chapter, any package kept for the purpose of sale or offered or exposed for sale shall bear on the outside of the package a definite, plain and conspicuous declaration of:

1. The identity of the commodity in the package, unless the commodity can easily be identified through the wrapper or container.

2. The quantity of contents in terms of weight, measure or count.

3. The name and place of business of the manufacturer, packer or distributor, in the case of any package kept, offered or exposed for sale or sold in any place other than on the premises where packed.

4. The price, except as provided in subsections L, M and N of this section.

G. In addition to the declarations required by subsection F of this section, any package being one of a lot containing random weights of the same commodity and bearing the total selling price of the package shall bear on the outside of the package a plain and conspicuous declaration of the price per single unit of weight.

H. If a packaged commodity is advertised in any manner with the retail price stated, there shall be closely and conspicuously associated with the retail price a declaration of quantity as is required by law or rule to appear on the package. If a dual declaration is required, only the declaration that sets forth the quantity in terms of the smaller unit of weight or measure need appear in the advertisement.

I. The packager of a short weighted item offered for sale is liable under this chapter.

J. If a retail seller engaging in the sale of motor fuel posts the selling price of the fuel on the premises, the seller shall post the selling price only by the price per gallon, except that if the fuel is dispensed by a measure other than whole gallons the seller shall represent the selling price for each unit of such other measure on the individual pump or other dispensing device. If a retail seller engaging in the sale of motor fuel advertises the price of the fuel off the premises, the retail seller shall advertise the price only by the price per gallon.

K. The owner or operator of a motor fuel dispensing site shall ensure that a sticker provided by the department of transportation that is three inches by five inches and that depicts the amount of federal and state taxes imposed on one gallon of gasoline is displayed on one side of each motor fuel dispenser. The sticker required by this

subsection shall contain white lettering on a black background or black lettering on a white background to ensure a contrasting color to the motor fuel dispenser and shall be placed on the upper sixty percent of the dispenser. The division shall use stickers provided by the department of transportation. A template of the sticker shall be placed on the division's website for use by retailers.

L. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, the seller may post the price of the package on the shelf or may display the price at or near the point of display of the product.

M. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, if the package is available for sale only with the assistance of a salesperson, the seller may display the package at a service counter staffed by the salesperson.

N. Instead of each package bearing the price as required under subsection F, paragraph 4 of this section, if the package is offered for sale at a price reduced by a percentage or a fixed amount from a previously offered price or at a reduced price for the purchase of multiple items, the reduction shall be displayed at the point of display of the package or near the point of display of the package in the manner required by this section.

O. On the request of a consumer, a retail seller shall provide:

1. A means of recording prices such as grease pencils, felt markers, scanners or other similar instruments for recording the price.

2. A written statement of the retail seller's policies regarding errors in pricing.

3-3432. Sale, delivery or consignment of motor fuel; temperature presumption

For the purpose of any sale, offer to sell, delivery or consignment of motor fuel in a quantity of five thousand gallons or more, the volume of the motor fuel for the purposes of calculating the price of the motor fuel is considered to be the volume that the quantity of the motor fuel would equal at the time of loading for sale, delivery or consignment if the temperature of the motor fuel was sixty degrees Fahrenheit. Any correction or adjustment required by this section shall be calculated on the basis of American society for testing and materials D1250-80, table 6B.

3-3433. Standards for motor fuel; exceptions

A. Except as provided in section 3-3434 and subsections C, D, E, F, G and K of this section, a retail seller or fleet owner shall not store, sell or expose or offer for sale any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the associate director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive. This subsection does not prohibit product origination disclaimer labeling on the retail dispenser.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the associate director of the division by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A shall be 9.0 pounds per square inch from and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

E. From and after September 30 through March 31 of each year, a person shall not supply or sell gasoline that exceeds the ASTM D4814 class A vapor pressure/distillation class ten volume percent evaporated distillation temperature.

F. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in a county with a population of one million two hundred thousand persons or more and any portion of a county contained in area A shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

G. Exclusively for the purposes of transportation conformity and only if the administrator of the United States environmental protection agency fails to approve the applicable plan required pursuant to section 49-406, maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area B shall be ten pounds per square inch from

and after September 30 through March 31 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

H. Notwithstanding subsections D, F and G of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and the associate director determine will result in either of the following:

1. Motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection D of this section and section 3-3492. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by this section and with the minimum oxygen content or percentage by volume of ethanol as prescribed by section 3-3492.

2. Motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection F of this section. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the motor vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection F of this section.

I. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection H of this section and this subsection may be used by any gasoline provider unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Gasoline providers that use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

J. A person shall not sell or offer or expose for sale diesel fuel grade 1, 2 or 4 as defined in ASTM D975, biodiesel, biodiesel blends or biomass-based diesel or biomass-based diesel blends that contain sulfur in excess of fifteen parts per million. Locomotive and marine diesel fuel is exempt from this requirement if the fuel meets the requirements of 40 Code of Federal Regulations section 80.513(g) and (h).

K. A person shall label dispensers at which biodiesel, biodiesel blends, biomass-based diesel or biomass-based diesel blends are dispensed in conformance with 16 Code of Federal Regulations part 306. This section does not preclude a person from labeling a dispenser that dispenses diesel fuel that contains up to five percent biodiesel or biomass-based diesel with a label that states "may contain up to five percent biodiesel" or "may contain up to five percent biomass-based diesel".

L. For biodiesel blends that contain more than five percent by volume of biodiesel, a person shall prepare product transfer documents in a manner that notifies the transferee of the percent by volume of biodiesel in the product.

M. The associate director shall adopt rules regarding the establishment and enforcement of all of the following:

1. National or federal standards for individual biofuels and biofuel blends.

2. United States environmental protection agency and ASTM test methods for individual biofuels and biofuel blends.

3. Registration and reporting requirements for producers, blenders and suppliers of biofuels and biofuel blends.

4. Labeling requirements for biofuels and biofuel blends other than biodiesel or biodiesel blends.

5. Quality assurance and quality control programs for producers, blenders and suppliers of biofuels and biofuel blends addressing rack, batch or other blending.

6. Requirements that the dispensing equipment meet appropriate UL ratings where available and applicable, that the equipment comply with rules adopted by the division relating to approval, installation and sale of devices and that the equipment be compatible with the products being dispensed.

N. A biofuels or biofuel blends producer, blender, distributor, supplier or retail seller that is in compliance with this section and the rules adopted pursuant to this section is not liable to a consumer for any injuries or property damage related to a consumer who misfuels.

O. If any person transfers custody or title of a diesel fuel or distillate, biodiesel, a biodiesel blend, biomass-based diesel or a biomass-based diesel blend, except if the fuel is dispensed into a motor vehicle or nonroad, locomotive or marine equipment,

the transferor shall provide to the transferee product transfer documents that conform with 40 Code of Federal Regulations section 80.590.

P. If the transfer of a motor fuel is from a terminal, storage facility, or transmix facility, the product transfer documents shall contain the information prescribed in subsection O of this section. In addition, the fuel transporter shall ensure that the name and address of the final destination for the shipment, as prescribed by division rule, are included and that the product transfer documents accompany the shipment to its final destination.

3-3434. Area C; standards for motor fuel; exceptions

A. Except as provided in subsections C and D of this section, after May 31, 2008, a retail seller or fleet owner shall not store, sell or expose or offer for sale in area C any motor fuel, kerosene, oil or other liquid or gaseous fuel or lubricating oil, lubricant, mixtures of lubricants or other similar products if the product fails to meet the standards specified in this section and in the rules adopted by the associate director.

B. A person shall not misrepresent the nature, origination, quality, grade or identity of any product specified in subsection A of this section or represent the nature, origination, quality, grade or identity of such product in any manner calculated or tending to mislead or in any way deceive.

C. After consultation with the director of the department of environmental quality, the standards and test methods for motor fuels shall be established by the associate director of the division by rule.

D. Maximum vapor pressure for gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles in area C shall be 7.0 pounds per square inch from and after May 31 through September 30 of each year. Fuel used in motor vehicles at a manufacturer's proving ground or a motor vehicle racing event is exempt from this subsection.

E. The associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and associate director determine will result in motor vehicle non-methane hydrocarbon emissions that are equal to or less than the emissions that result under compliance with subsection D of this section. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the motor

vehicle non-methane hydrocarbon emissions of the alternate fuel control measure with the motor vehicle non-methane hydrocarbon emissions of a fuel that complies with the maximum vapor pressure standard as prescribed by subsection D of this section.

F. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection E of this section and this subsection may be used by any gasoline provider unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Gasoline providers that use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

3-3435. Heating of motor fuel prohibited

A person shall not sell or offer or expose for sale any motor fuel if the temperature of the motor fuel has been changed by any type of a heating device.

3-3436. Dispensing motor fuel; hold-open latches; grip guards; definition

A. A retail seller may equip all nozzles from which motor fuel is dispensed with an operating hold-open latch.

B. From and after September 30, 2018, all retail diesel fuel dispensers shall be equipped with nozzles that have green grip guards and all retail ethanol flex fuels shall be equipped with yellow grip guards. Other product nozzles may not have green or yellow grip guards.

C. For the purposes of this section, "hold-open latch" means a device that is an integral part of the automatic nozzle and that is specifically manufactured to dispense motor fuel without requiring the consumer's physical contact with the automatic nozzle.

3-3437. Aversive or bittering agent in engine coolant and antifreeze; liability limitation; exceptions; violation; classification

A. Engine coolant or antifreeze that is sold in this state on or after January 1, 2008, that is manufactured on or after September 1, 2007 and that contains more than ten percent ethylene glycol shall include denatonium benzoate at a minimum of thirty parts per million and a maximum of fifty parts per million as an aversive or bittering agent in the product to render it unpalatable. A manufacturer or packager of engine coolant or antifreeze that is subject to this section shall maintain a record of the trade name, scientific name and active ingredients of the aversive or bittering agent used pursuant to this section. A manufacturer or packager of engine coolant or antifreeze shall furnish information and documentation maintained pursuant to this section to a member of the public on request.

B. This section applies only to manufacturers, packagers, distributors, recyclers or sellers of engine coolant or antifreeze. For the purposes of this section, selling does not include the installation of engine coolant or antifreeze for compensation.

C. A manufacturer, packager, distributor, recycler or seller of engine coolant or antifreeze that is required to contain an aversive or bittering agent pursuant to this section is not liable to any person for personal injury, death, property damage, damage to the environment or natural resources or economic loss that results from the inclusion of denatonium benzoate in engine coolant or antifreeze.

D. The limitation on liability provided in subsection C of this section applies only if denatonium benzoate is included in engine coolant or antifreeze in the concentrations required by this section. The limitation on liability provided in subsection C of this section does not apply to a particular liability to the extent that the cause of that liability is unrelated to the inclusion of denatonium benzoate in engine coolant or antifreeze.

E. A political subdivision of this state shall not establish or continue in effect a prohibition, limitation, standard or other requirement relating to the inclusion of an aversive or bittering agent in engine coolant or antifreeze, with respect to retail containers containing less than fifty-five gallons of engine coolant or antifreeze, that is different from, or in addition to, this section.

F. This section does not apply to either:

1. The sale of a motor vehicle that contains engine coolant or antifreeze.

2. Wholesale containers of engine coolant or antifreeze containing fifty-five gallons or more of engine coolant or antifreeze.

G. The division may inspect, investigate, analyze and take appropriate actions to administer and enforce this section.

H. A person who violates this section is guilty of a class 3 misdemeanor.

3-3451. Licensing devices used for commercial purposes; authorization to test devices used for all other purposes; fees; certification; issuance of license; violation; classification

A. A person shall not use a commercial device unless the device is licensed or certified as provided in this chapter.

B. A license shall be obtained annually from the division on forms prescribed and furnished by the division. The fee prescribed in this chapter shall be submitted with the prescribed form. A license shall be obtained not later than thirty days following the first day of commercial use for original installations. If the ownership of a device that is licensed is transferred, the ownership of the license may be transferred. On transfer of a license, new licensees shall notify the division of the licensee's name and address and the location of the device. A license for a device shall be posted at the licensed business location in a manner that provides the division with access to the license during normal business hours.

C. Any license issued under this chapter applies only to the instrument or device specified in the license, except that the associate director may permit the license to be applicable to a replacement for the original instrument or device.

D. Noncommercial devices may be tested by the division pursuant to this chapter. A weighing device owned by a person who uses it only for the purpose of weighing the person's own livestock or agricultural products and for no commercial purposes is declared to be a noncommercial device, and the owner of the device is exempt from paying any licensing fees collected pursuant to this chapter.

E. If a commercial livestock scale is used for thirty or more days in a calendar year, the scale is required to be licensed. If a commercial livestock scale is used for fewer than thirty days in a calendar year, the scale is required to be certified. If an owner or operator of a commercial livestock scale requests that the division certify the scale, the certification fee shall be comparable to the license fee prescribed in section 3-3452. If an owner or operator of a noncommercial scale requests that the division certify the scale, the certification fee shall be comparable to the license fee prescribed in section 3-3452.

F. At the request of the owner or user of a portable batch plant, the division may certify the portable batch plant. If the division certifies a portable batch plant, the certification fee shall be comparable to the license fee prescribed in section 3-3452.

G. Any portable measuring device that is five gallons or less and that is properly marked by the manufacturer according to standards established by the national institute of standards and technology is exempt from the licensing and certification provisions of this chapter.

H. For the purpose of ascertaining compliance with the licensing provisions of this article, the department of revenue shall provide the division with a monthly report of all transaction privilege tax licenses issued in the prior month. The report shall include the business name, type of business and business address of the licensee.

I. The department of revenue shall annually notify each transaction privilege tax licensee that the licensee is required to register new or existing weighing or measuring devices with the division.

J. A person or the person's agent who knowingly files with the division any notice, statement or other document required under this section that is false or that contains any material misstatement of fact is guilty of a class 2 misdemeanor.

3-3452. Licensing fees; proration; cancellation for nonpayment

A. The following fees shall be paid to the division as license fees for devices used for commercial purposes:

Schedules of Fees

1. Weighing devices:

0 - 500 pounds capacity (or metric equivalent)	$ 12.00
501 - 2,000 pounds capacity	18.00
2,001 - 7,500 pounds capacity	36.00
7,501 - 20,000 pounds capacity	80.00
20,001 - 60,000 pounds capacity	120.00
60,001 pounds capacity and over	180.00

2. Liquid metering devices (meters) other than

''''''for liquid petroleum gas and utility meters:

maximum 12 gallons per minute and under	12.00
maximum 13 - 150 gallons per minute	36.00
maximum 151 - 500 gallons per minute	90.00
maximum 501 - 1,000 gallons per minute	138.00
maximum 1,001 gallons per minute and over	168.00

3. Motor fuel devices (dispensers) other than

''''''for liquid petroleum gas (not including

''''''satellite hoses or nozzles):

	Standard	Vapor Recovery Test
each meter	15.00	30.00
each blending valve	15.00	30.00

high volume (over 19 gallons per minute)

diesel per hose and nozzle	15.00

keylock, limited access, with accumulators,

per hose and nozzle	22.50

remote indicator and control unit (no hoses

or nozzles) (accessory only)	22.50

4. Liquid measuring devices for liquid petroleum

''''''gas (meters):

small bottle fill measuring devices	24.00
motor fuel measuring devices, uncompensated	24.00

motor fuel measuring devices, temperature

compensating, including compressed natural

gas filling devices	48.00
motor fuel measuring devices, keylocks	48.00
3/4" and 1" meters, uncompensated	48.00
1 1/4", 1 1/2" and 1 3/4" meters, uncompensated	72.00

2" meters and larger, uncompensated	72.00
3/4" and 1" meters, temperature compensating	54.00

1 1/4", 1 1/2" and 1 3/4" meters, temperature

compensating	90.00
2" meters and larger, temperature compensating	96.00

5. Linear measuring devices:

all linear measuring mechanical devices	24.00

6. Time measuring devices:

all time measuring mechanical, electrical and

electronic devices	24.00

7. Counting devices:

all mechanical and electronic counting devices	12.00

B. Testing, inspection, certification and calibration fees shall be paid pursuant to the fee schedule set forth in subsection A of this section or the rules of the division. The division shall waive license fees for customer parking time measuring meters owned by municipalities.

C. Issuance or renewal of license as:

1.	Public weighmaster	48.00
2.	Registered service agency	24.00
3.	Registered service representative	4.80

D. The fees set forth in this section are the maximum amounts that may be charged, but the associate director, at the associate director's discretion, may reduce the fees to any amount the associate director deems necessary.

E. The associate director may prorate the fees set forth in this section for partial-year application.

F. If a person fails to pay a license, permit or certification fee on or before the date the fee is due, the division shall impose a penalty equal to twenty percent of the fee. For each thirty-day period after the date the fee is due, the division shall impose an additional penalty equal to twenty percent of the fee. If a person fails to pay a license, permit or certification fee and all related penalties for ninety days after the fee is due, the division shall cancel the license, permit or certification.

3-3453. License as public weighmaster or deputy weighmaster required; application; fee; renewal; training; exemptions

A. A person shall not serve as a public weighmaster or deputy weighmaster unless the person is issued a public weighmaster or deputy weighmaster license by the division in accordance with practices and procedures to be established by the associate director. An applicant for a public weighmaster or deputy weighmaster license shall:

1. Demonstrate a thorough knowledge of all appropriate weights and measures laws, rules and policies.

2. Have possession of, or have available for use, a scale that is of sufficient capacity and size and that is licensed and certified pursuant to section 3-3451.

3. Demonstrate the necessary experience and training to operate the scale.

4. Pass the required examination administered by the division. The associate director may waive the examination required by this paragraph.

B. An application for a public weighmaster or deputy weighmaster license shall be submitted to the division on a form prescribed and furnished by the division and shall be accompanied by the license fee prescribed in section 3-3452. The division shall issue a public weighmaster or deputy weighmaster license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. A public weighmaster or deputy weighmaster license shall be posted at the licensed scale site in a manner that provides the division access to the license during normal business hours.

C. If a licensee submits a license renewal application to the division before the date of expiration of the current license together with the renewal fee prescribed by the division, the existing license shall be valid for thirty days following its expiration date, or until issuance of the renewal license, whichever occurs first.

D. A public weighmaster shall provide the necessary training for any deputy weighmaster using the public weighmaster's seal to certify weigh tickets.

E. Except as otherwise provided in subsection G of this section, the certified weighing of any property, livestock or commodity shall be performed only by a public weighmaster or deputy weighmaster. The following persons are not required to obtain licenses as public weighmasters or deputy weighmasters:

1. A person weighing property, livestock or a commodity that the person or the person's employer is either buying or selling for the own account of the person or the person's employer.

2. A person weighing property, livestock or a commodity in conjunction with or on behalf of a publicly sponsored or nonprofit organization sponsored exposition, fair or show event.

F. The official weighing of vehicles or conveyances by any employee of a city, county or state agency for weight-control regulatory purposes on public highways, roads or streets does not constitute public weighing.

G. On request and without charge, the division may issue a limited weighmaster license to any qualified officer or employee of a city, a county or the state authorizing the officer or employee to act as a public weighmaster only within the scope of the officer's or employee's official employment and duties in enforcing local ordinances substantially complying with the requirements of this chapter. While performing the duties of a limited weighmaster, a limited weighmaster shall have the limited weighmaster's license in the limited weighmaster's possession.

H. The division shall approve all forms, certificates, seals and other documents together with practices, procedures and equipment used by public weighmasters or deputy weighmasters in the performance of their duties. A public weighmaster or deputy weighmaster shall keep for such a period as the division by rule may require a legible copy of each weight certificate the public weighmaster or deputy weighmaster issues. Copies of weight certificates shall be available at all reasonable times for inspection by the division.

3-3454. License required as registered service agency or registered service representative; qualifications; application; fees; renewal

A. A person shall not operate as a registered service agency or as a registered service representative until a license is issued as provided in this section.

B. An applicant for a registered service agency license shall:

1. Submit application information satisfactory to the division.

2. Comply with section 3-3416, subsection E or provide evidence that the applicant's vapor recovery test equipment has been certified by the manufacturer of the equipment within one year of the date of the application or as deemed appropriate by the division.

3. Pay all required fees.

C. An applicant for a registered service representative license shall:

1. Demonstrate a thorough working knowledge of all appropriate weights and measures laws, orders and rules.

2. Demonstrate to the division that the applicant has possession of, or has available for use, weights and testing equipment appropriate in design and adequate in amount.

3. Demonstrate the necessary knowledge, training and experience regarding appropriate standards and testing equipment to service commercial devices, vapor recovery systems or vapor recovery components.

4. Pass the required examination administered by the division.

5. Pay all required fees.

D. An application for a registered service agency or registered service representative license shall be submitted by the applicant to the division on a form prescribed and furnished by the division. The division shall issue a registered service agency or registered service representative license for a period of twelve calendar months. The license expires on the first day of the month and year indicated on the license. Each license shall contain, among other information, a license number. A registered service agency license shall be posted at the licensed business location in a manner that provides the division with access to the license during normal business hours. While performing the duties of a registered service representative, a registered service representative shall have the registered service representative's license in the registered service representative's possession.

E. If a licensee submits a license renewal application to the division before the date of expiration of the current license, together with the prescribed renewal fee, the existing license is valid for thirty days following its expiration date or until issuance of the renewal license, whichever occurs first.

F. The associate director shall publish, from time to time as the associate director deems appropriate, and may supply on request lists of registered service representatives and registered service agencies.

G. Each registered service representative license issued by the division shall indicate the type of service approved by the division for the licensee.

H. A registered service agency shall use forms and related procedures prescribed by the division in the performance of its duties. A registered service agency shall keep a legible copy of each form used for at least the time period prescribed by the division in its rules. Copies of the forms shall be available during normal business hours for inspection by the division.

3-3471. Registered service representative; powers; violation; classification

A. When any commercial device specified in this chapter is in commercial use and a valid license for the device has not been procured by the owner, the owner's agent or the operator of the device, the division, after giving notice of the licensing requirements to the owner, the owner's agent or the operator, shall prohibit the further commercial use of the unlicensed device until the proper license has been issued. The division may employ and attach to the device such forms, notices or security seals as it considers necessary to prevent the continued unauthorized use of the device.

B. A registered service representative may:

1. With approval of the division, remove an official rejection tag placed on a commercial device, vapor recovery system or vapor recovery component.

2. Place in service, until such time as an official examination can be made, a commercial device, vapor recovery system or vapor recovery component that has been officially rejected or placed out of service.

3. Place in service, until such time as an official examination can be made, a commercial device for which a commercial device application has been completed and submitted to the division.

C. The owner of any business who has not applied for and has not been issued a license for the right to do business, involving the use of a commercial device, by the division and who is found selling or offering for sale or delivering or distributing to a consumer is guilty of a class 2 misdemeanor, and the division shall confiscate and seize the commercial device or any vehicle tank, or vehicle tank and meter, or any other such measuring device used by the business for the sale, delivery or distribution as evidence.

D. The associate director and any other authorized personnel shall not be liable to the owner or any other persons, firms, partnerships, corporations, trusts or agencies for damages, directly or indirectly, caused by or resulting from the seizure.

E. If a commercial device licensed pursuant to this chapter is used contrary to any provision of this chapter or any rule adopted pursuant to this chapter, the division, in addition to any other penalty imposed by this chapter, shall suspend, revoke or refuse to renew the license.

3-3472. Revocation or suspension of licenses; procedure; judicial review

A. Except as otherwise provided by this section, any proceeding to revoke or suspend a license issued pursuant to this chapter shall be conducted in accordance with title 41, chapter 6, article 10.

B. The associate director may initiate proceedings for revocation or suspension of a license issued pursuant to this chapter on the associate director's own motion or on a verified complaint for noncompliance with or a violation of this chapter or of any rule adopted pursuant to this chapter.

C. If, after having been served with the notice of hearing as provided for in title 41, chapter 6, article 10, the licensee fails to appear at the hearing and defend, the division shall proceed to hear evidence against the licensee and shall enter such order as is justified by the evidence, which order shall be final unless the licensee petitions for a review as provided in title 41, chapter 6, article 10.

D. At all hearings the attorney general of this state, one of the attorney general's assistants, or a special assistant designated by the attorney general shall appear and represent the division.

E. Except as provided in section 41-1092.08, subsection H, any final administrative decision made pursuant to this chapter is subject to judicial review pursuant to title 12, chapter 7, article 6.

3-3473. Violations; classification; jurisdiction

A. A person is guilty of a class 1 misdemeanor who:

1. Knowingly hinders, interferes with or obstructs in any way the associate director or any of the associate director's agents or inspectors in entering the premises where a commercial device may be kept for inspecting or testing or in the performance of the official duties of the associate director or the associate director's agent or inspector.

2. Impersonates in any way the associate director or any one of the associate director's agents or inspectors by the use of the associate director's seal or badge or a counterfeit of the associate director's seal or badge, or in any other manner.

3. Uses, or possesses for the purpose of using for any commercial purpose, sells, offers or exposes for sale or hire, or possesses for the purpose of selling or hiring an incorrect weight or measure or any device or instrument used or calculated to falsify any weight or measure.

4. Sells, or offers or exposes for sale, less than the quantity the person represents of any commodity, thing or service.

5. Takes more than the quantity the person represents of any commodity, thing or service, when, as buyer, the person furnishes the weight or measure by means of which the amount of the commodity, thing or service is determined.

B. A person is guilty of a class 2 misdemeanor who:

1. Uses, or possesses for the purpose of current use for any commercial purpose, a weight or measure that does not bear a seal or mark of approval based on inspection and test as provided in section 3-3414, subsection A, paragraph 11, unless the weight or measure has been exempted from testing by order of the division, or unless the device has been placed in service as provided in this chapter. Any person or persons making use of a commercial device that is subject to this chapter shall report to the associate director or the associate director's representatives, in writing, the number and location of the commercial device and shall promptly report the installation of any new commercial device.

2. Disposes of any rejected or condemned weight or measure in a manner contrary to law or rule.

3. Removes from any weight or measure, contrary to law or rule, any tag, seal or mark placed on the weight or measure by the appropriate authority pursuant to this chapter.

4. Keeps for the purpose of selling, advertising or offering or exposing for sale or sells any commodity, thing or service in a condition or manner contrary to law or rule.

5. Uses in retail trade, except in the preparation of packages put up in advance of sale and of medical prescriptions, a weight or measure that is so positioned that its indications may not be accurately read and the weighing, metering, measuring or counting operation observed from some position that may reasonably be assumed by a customer.

6. Violates this chapter or rules adopted under this chapter. A continuing violation may be deemed to be a separate violation each day during which the violation is committed for the purpose of imposing a fine.

C. The provisions of this section are in addition to and not in limitation of any other provision of law.

D. The attorney general and the county attorney shall have concurrent jurisdiction to prosecute violations of this chapter.

3-3474. Presumptive evidence of use

When a weight, measure, meter, counter or commercial device is in or about any place in which or from which buying or selling is commonly carried on, there shall be a rebuttable presumption that the weight, measure, meter, counter or commercial device is regularly used for the business purpose of the place.

3-3475. Civil penalties; hearing

A. A person who violates this chapter, any rule of the division or any license requirement is subject to a civil penalty imposed by the associate director.

B. A person who violates this chapter, any rule of the division or any license requirement may request an informal or formal hearing to review a civil penalty

imposed under this section. If the person requests an informal hearing, the division may conduct the informal hearing, in person or telephonically, to resolve a warning or citation. If the person requests a formal hearing or the warning or citation is not resolved in the informal hearing, the division shall conduct a formal hearing in accordance with title 41, chapter 6, article 10. Except as prescribed in subsection C of this section, the civil penalty shall not exceed one thousand dollars for each infraction nor more than ten thousand dollars for any thirty-day period at each business location, for each registered service representative or for each public weighmaster, provided that no person shall be assessed more than fifty thousand dollars per thirty-day period.

C. The associate director may double the maximum civil penalty if any of the following applies:

1. A commercial device is found to be in violation with results that favor the retailer at more than twice the allowable tolerance as stated in national institute of standards and technology handbook 44.

2. A package is found to exceed the maximum allowable variation for the labeled quantity allowed in national institute of standards and technology handbook 133 or the average error of the lot is twice the sample error limit in favor of the retailer.

3. A vapor recovery system reinspection fails the required tests.

4. A maximum civil penalty has been imposed on a retailer for a price posting or price verification violation and in a reinspection, if conducted within ninety days, the failure rate is ten percent or more and at least one error is in favor of the retailer.

5. A maximum civil penalty has been imposed on a refiner, refinery, pipeline, terminal, fuel transporter, registered supplier or transmix processing facility for a violation of motor fuel quality standards or producing a product transfer document that is incorrect, incomplete or produced in any manner tending to mislead or deceive a person.

D. The attorney general shall bring actions to recover civil penalties pursuant to this section in the superior court in the county in which the violation occurred or in a county where the agency has its office. All monies derived from civil penalties shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

3-3476. Delinquent civil penalties and fees

In addition to any other penalty, if a civil penalty or any fee due pursuant to this chapter has not been paid thirty days after the due date, the civil penalty or fee is delinquent and the division may refuse to issue a license or may revoke a license pursuant to this chapter until the civil penalty or fee is paid in full.

3-3491. Standards for oxygenated fuel; volatility; exceptions

A. From and after September 30 through March 31 of each year, in a county with a population of one million two hundred thousand or more persons and in any portion of a county contained in area A, blends of gasoline with ethanol shall not exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section. From and after September 30 through March 31 of each year, in area B, blends of gasoline with ethanol may exceed the volatility requirements prescribed by section 3-3433 and rules adopted by the associate director under that section by up to one pound per square inch if the base fuel meets the requirements of ASTM D4814 and the final gasoline-ethanol blend contains at least six percent ethanol by volume but does not exceed United States environmental protection agency waivers. For any other locations and period of time, blends of gasoline with ethanol shall meet the volatility requirements as determined by division rule.

B. Notwithstanding subsection D of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and the associate director determine will result in motor vehicle carbon monoxide emission reductions that will equal or exceed the reductions that result under subsection D of this section. In making those determinations, the director of the department of environmental quality and the associate director shall compare the alternative measure against the emission reduction that would be obtained from a fuel with the maximum vapor pressure standard prescribed by subsection D of this section and the minimum oxygen standard prescribed by section 3-3492 or 3-3495. Alternative fuel control measures approved by the associate director of the division in consultation with the director of the department of environmental quality may be used by any gasoline provider unless the approval is rescinded by the associate director of the division at least one hundred eighty days before the beginning of any oxygenate period in the future. Gasoline providers that choose to use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director not later than sixty days before the start of the oxygenate period.

C. From and after September 30 through March 31 of each year, all blends of gasoline with alcohol other than ethanol shall satisfy all of the requirements prescribed by section 3-3433 and rules adopted by the associate director under that section and the provisions of a waiver issued by the United States environmental protection agency pursuant to 42 United States Code section 7545(f).

D. Notwithstanding subsection A of this section, if the director of the department of environmental quality has previously raised the minimum oxygen content to the maximum percentage of oxygen allowed for each oxygenate as provided by section 3-3495, the designated air quality planning agency for area B has considered, analyzed and reviewed the costs and benefits of all other reasonable and available control measures in lieu of reducing volatility requirements to nine pounds per square inch and the director of the department of environmental quality finds that area B has failed to maintain the carbon monoxide national ambient air quality standards by violating the standard, beginning with the oxygenate period beginning on the following September 30 and for each oxygenate period thereafter in area B, the volatility requirements described by section 3-3433, subsection G may be reduced to nine pounds per square inch. If a violation of the carbon monoxide national ambient air quality standards is recorded after the volatility requirements have been reduced to nine pounds per square inch, the director of the department of environmental quality shall remove the one pound per square inch waiver for gasoline-ethanol blends.

E. Gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within this state shall not contain the following:

1. Methyl tertiary butyl ether that exceeds 0.3 percent by volume.

2. A total of more than 0.10 percent oxygen by weight collectively from all of the following oxygenates:

(a) Diisopropylether (DIPE).

(b) Ethyl tert-butylether (ETBE).

(c) Iso-butanol.

(d) Isopropanol.

(e) Methanol.

(f) N-butanol.

(g) N-propanol.

(h) Sec-butanol.

(i) Tert-amylmethylether (TAME).

(j) Tert-butanol.

(k) Tert-pentanol (tert-amylalcohol).

F. Subsection E of this section does not prohibit the transshipment through this state, including storage incident to that transshipment, of gasoline that contains the oxygenates prescribed by subsection E of this section if both of the following apply:

1. The gasoline is used or disposed outside this state.

2. The gasoline is segregated from gasoline that is intended for use inside this state.

3-3492. Area A; sale of gasoline; oxygen content

A. From and after November 1 through March 31 of each year:

1. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner shall, for a gasoline-ethanol blend, contain not less than ten percent by volume of ethanol nor more than the maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

2. All gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A or that is consumed in a motor vehicle within a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A by a fleet owner shall, for a blend other than a gasoline-ethanol blend, contain not less than 2.7 percent by weight of oxygen nor more than the

maximum percentage of oxygen allowed by provisions of a waiver issued or other limits established by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, the associate director of the division in consultation with the director of the department of environmental quality shall approve alternate fuel control measures that are submitted by gasoline providers and that the director and the associate director determine will result in motor vehicle carbon monoxide emissions that are equal to or less than emissions that result under compliance with subsection A of this section and section 3-3433. In making this determination, the associate director of the division and the director of the department of environmental quality shall compare the emissions of the alternate fuel control measure with the emissions of a fuel with a maximum vapor pressure standard as prescribed by section 3-3433 and with the minimum oxygen content or percentage by volume of ethanol as prescribed by this section.

C. Any alternate fuel control measures that are approved shall not increase emissions of non-methane hydrocarbons, particulates, carbon monoxide or oxides of nitrogen. Alternate fuel control measures approved pursuant to subsection B of this section and this subsection may be used by any gasoline provider unless the approval is rescinded more than one hundred eighty days before the first day of a gasoline control period. Gasoline providers that use an approved alternate fuel control measure shall annually submit a compliance plan to the associate director no later than sixty days before the first day of a gasoline control period.

3-3493. Area A; fuel reformulation; rules

A. All gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3433, subsections D and F.

B. For the period beginning November 1 through March 31 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in a county with a population of one million two hundred thousand or more persons and any portion of a county contained in area A, subject to an appropriate waiver granted by the administrator of the United States environmental protection agency pursuant to section 211(c)(4) of the clean air act as defined in section 49-401.01, shall comply with standards for California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997 and shall meet the maximum vapor pressure requirements in section 3-3433, subsections D and F. The fuel described in this subsection shall meet the requirements of section 3-3492, subsection A, paragraph 1.

C. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to comply with standards other than the standards prescribed by section 3-3492, subsection A if the petitioner can demonstrate that ethanol supply shortages are imminent.

D. The petition shall:

1. Identify specific supply conditions that will result in a shortage of ethanol.

2. Identify which oxygenate or oxygenates and the concentration that will be blended into gasoline for sale or use in area A.

3. Demonstrate that the alternative oxygenate blend comes closest to meeting a three and one-half percent by weight oxygen content at reasonable cost, unless the registered supplier or oxygenate blender is petitioning to use a gasoline-ethanol blend containing less than ten percent by volume of ethanol.

4. Specify a time period for compliance with any provision of section 3-3492, subsection A, not to exceed sixty days.

E. The associate director shall either grant or deny the petition in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

F. The associate director may reauthorize a petition if the petitioner can demonstrate that the conditions have continued. The reauthorization of a petition shall not exceed thirty days.

G. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any such petition.

H. The director of environmental quality in consultation with the associate director of the division shall adopt by rule:

1. Requirements to implement subsections A, B, C and D of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsections A, B, C and D of this section.

I. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

3-3494. Area C; fuel reformulation; rules

A. From and after May 31 through September 30 of each year, all gasoline produced and shipped to or within this state and sold or offered for sale for use in motor vehicles in area C shall comply with either of the following fuel reformulation options:

1. A gasoline that meets standards for federal phase II reformulated gasoline, as provided in 40 Code of Federal Regulations section 80.41, paragraphs (e) through (h), in effect on January 1, 1999, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3434, subsection D.

2. California phase 2 reformulated gasoline, including alternative formulations allowed by the predictive model, as adopted by the California air resources board pursuant to California Code of Regulations title 13, sections 2261 through 2262.7 and 2265, in effect on January 1, 1997, except that the minimum oxygen content standard does not apply. The gasoline shall also meet the maximum vapor pressure requirements in section 3-3434, subsection D.

B. Any registered supplier or oxygenate blender, as defined in division rules, may petition the associate director to request that all registered suppliers or oxygenate blenders be allowed to supply gasoline in area C that does not meet the standards in subsection A of this section if the petitioner demonstrates that a shortage in the supply of gasoline meeting the standards in subsection A of this section is imminent.

C. A petition under subsection B of this section shall:

1. Identify specific supply conditions that will result in a shortage of gasoline meeting the standards in subsection A of this section.

2. Identify the formulation of gasoline that will be sold in area C in lieu of gasoline meeting the standards in subsection A of this section.

3. Specify a time period for compliance with the standards of subsection A of this section not to exceed sixty days.

D. The associate director shall either grant or deny a petition under subsection B of this section in writing within seven days of its receipt. Any decision by the associate director to grant the petition shall be equally applicable to all registered suppliers or oxygenate blenders and shall not be selectively applied to any single registered supplier or oxygenate blender. The petition may be granted only if the associate director verifies that the basis for requesting the petition is factual.

E. The associate director may reauthorize a petition granted under subsection B of this section if the petitioner demonstrates that the conditions identified in the petition have continued. The reauthorization of a petition shall not exceed thirty days.

F. The associate director of the division shall consult with the director of the department of environmental quality before granting, reauthorizing or denying any petition under subsection B of this section.

G. The associate director, in consultation with the director of the department of environmental quality, shall adopt by rule:

1. Requirements to implement subsections A, B and C of this section.

2. Requirements for recordkeeping, reporting and analytical methods for fuel providers to demonstrate compliance with subsection A of this section.

H. This section does not apply to fuel sold for use at a motor vehicle manufacturer proving ground or at a motor vehicle racing event.

3-3495. Area B; sale of gasoline; oxygen content

A. From and after September 30 through March 31 of each year, all gasoline that is supplied or sold by any person and that is intended as a final product for the fueling of motor vehicles within area B or that is consumed in a motor vehicle within area B by a fleet owner shall contain not less than 1.8 percent by weight of oxygen nor more than the maximum percentage of oxygen allowed by the provisions of a waiver issued by the United States environmental protection agency.

B. Notwithstanding subsection A of this section, at any time earlier than sixty days before September 30 of each year, the designated air quality planning agency for area B with the concurrence of the director of the department of environmental quality may give notice, pursuant to the applicable plan required under section 49-406 for the Tucson air planning area, to the associate director of the division that the minimum oxygen content for the ensuing oxygenate seasons will be increased not less than .3 percent by weight of oxygen and not more than the maximum percentage of oxygen allowed for oxygenates by provisions of a waiver issued or other limits established by the United States environmental protection agency. Before making a determination to increase the minimum oxygen content pursuant to this subsection, the designated air quality planning agency for area B shall consider and conduct a cost-benefit analysis on all reasonable carbon monoxide emission reduction measures that could be implemented in lieu of increasing the minimum oxygen content.

3-3496. Use of gasoline purchased outside of area A or area B

This article does not prohibit the use within area A or area B of gasoline purchased outside of area A or area B which does not contain the percentage weights of oxygen required by this article if the use is incidental and not for the purpose of evading the requirements of this article.

3-3497. Exemption

The provisions of this article do not apply to a manufacturer's proving ground or a motor vehicle racing event held in a vehicle emissions control area.

3-3498. Inspections

A. On request, an interstate pipeline terminal or a motor fuel storage or dispensing site shall provide a product transfer document to the division. Product transfer documents may be stored off site as provided by division rule.

B. On request, a motor fuel storage or dispensing site shall provide access to motor fuel dispensing cabinets to the division for inspection of fuel dispensing meters and blending valves.

3-3511. Definitions

(L15, Ch. 244, sec. 2. Eff. until 10/1/18)

In this article, unless the context otherwise requires:

1. "Annual throughput" means the amount of gasoline transferred into or dispensed from a gasoline dispensing site during twelve consecutive months.

2. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code section 7401-7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

3. "Gasoline dispensing site" means any site where gasoline is dispensed into a motor vehicle fuel tank from any stationary storage vessel.

4. "Stage I vapor recovery system" means a combination of pipes and hoses that creates a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank so that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

5. "Stage II vapor recovery system" means a system where at least ninety per cent by weight of the gasoline vapors that are displaced or drawn from a vehicle fuel tank

during refueling are transferred to a vapor-tight holding system or vapor control system.

3-3511. Definitions

(L14, Ch. 132, sec. 6 & L15, Ch. 244, sec. 2. Eff. 10/1/18)

In this article, unless the context otherwise requires:

1. "Annual throughput" means the amount of gasoline transferred into or dispensed from a gasoline dispensing site during twelve consecutive months.

2. "Clean air act" means the clean air act of 1963 (P.L. 88-206; 42 United States Code section 7401-7671) as amended by the clean air act amendments of 1990 (P.L. 101-549).

3. "Gasoline dispensing site" means any site where gasoline is dispensed into a motor vehicle fuel tank from any stationary storage vessel.

4. "Stage I vapor recovery system" means a combination of pipes and hoses that creates a closed system between the vapor spaces of an unloading gasoline cargo tank and a receiving storage tank so that vapors displaced from the storage tank are transferred to the gasoline cargo tank being unloaded.

3-3512. Stage I vapor recovery systems

A. A person shall not offer for sale, sell, install or use a new gasoline stage I vapor recovery system, or any new or rebuilt component parts of the system, unless the system or component part has been certified by the California air resources board as of March 31, 2001 or after that date, or has been approved by a third party accredited to test equipment and recognized by industry and the division, and has not been rejected by the division. The division shall maintain and keep current a list of stage I vapor recovery systems and component parts that are approved by the division. Only those systems that are approved shall be used in this state. All certified vapor recovery components must be clearly identified by a permanent identification affixed by the certified manufacturer or rebuilder.

B. For gasoline dispensing sites with a throughput of over ten thousand gallons per month in area A or area B, a person shall not transfer or allow the transfer of gasoline into storage tanks at gasoline dispensing sites unless the storage tank is equipped with a stage I vapor recovery system consisting of a vapor-tight return line from the storage tank or its vent to the gasoline transport vehicle.

C. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site subject to stage I vapor recovery requirements shall comply with the following:

1. Install all necessary stage I vapor recovery systems and make any modifications necessary to comply with the requirements.

2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.

3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage I vapor recovery systems.

4. Connect and ensure proper operation of the stage I vapor recovery systems whenever gasoline is being loaded, unloaded or dispensed.

5. In area A and other geographical areas as provided by subsection G of this section, have the stage I vapor recovery system tested annually by a registered service representative licensed by the division.

D. Before the initial installation or modification of any stage I vapor recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site shall obtain a plan review and approval from the division. Application for the plan review and approval shall be on forms prescribed and provided by the division.

E. The division in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for the installation and operation of stage I vapor recovery systems. The division shall establish by rule plan review and approval fees. In establishing those rules and standards, the associate director shall consider requirements in other states to ensure that only state-of-the-art technology is used.

F. Approval of a stage I vapor recovery system by the division does not relieve the owner or operator of the responsibility to comply with other applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

G. Any county, city or town outside of area A or area B may require gasoline dispensing sites with a throughput greater than ten thousand gallons per month to install, operate and maintain stage I vapor recovery systems in accordance with this section. Any county, city or town, including cities and towns within area B, also may require annual testing of required stage I vapor recovery systems pursuant to subsection C of this section. For a county, city or town considering the adoption of a resolution to require stage I vapor recovery systems or annual testing within its jurisdiction and on request, the department of environmental quality shall provide technical assistance in evaluating the air quality in that county, city or town and shall provide final review and approval of an adopted resolution.

H. A county board of supervisors or governing body of a city or town shall submit a resolution approved by the department of environmental quality to the associate director of the division requesting the imposition of the requirements for stage I vapor recovery systems within its jurisdiction.

I. The associate director shall adopt, by rule, compliance schedules for gasoline dispensing sites located within the jurisdiction requesting stage I vapor recovery system requirements no later than twelve months after receipt of the resolution from the county board of supervisors or governing board of a city or town. All gasoline dispensing sites shall be required to comply with stage I vapor recovery system rules within twenty-four months after the rules have been filed with the secretary of state. Sites with stage I vapor recovery systems already installed must comply with the testing requirements at the time the rules become effective.

J. A county board of supervisors or governing body of a city or town that adopts the requirements for stage I vapor recovery systems may repeal those requirements by adopting a resolution to remove the imposition of those requirements within its jurisdiction unless the county, city or town is in an ozone nonattainment area that has since been designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. On receipt of the resolution, the associate director of the division shall consult with the director of the department of environmental quality to verify that a county, city or town is outside of an ozone nonattainment area designated as moderate, serious or severe by the United States environmental protection agency under section 107(d) of the clean air act. After consultation with the department of environmental quality, the associate director of the division shall revise the rules to repeal the requirements for stage I vapor recovery systems within that jurisdiction as soon as practicable.

3-3513. Compliance schedules

Notwithstanding section 3-3512, subsection I relating to schedules of compliance:

1. Gasoline dispensing facilities located in area A or in any other geographical area as provided in section 3-3512, subsection G for which construction began after the certification of rules adopted pursuant to section 3-3512 shall be constructed to include stage I vapor recovery systems that meet the minimum standards set forth in this chapter and division rules.

2. All gasoline dispensing sites located in area A or in any other geographical area as provided in section 3-3512, subsection G that begin underground storage tank replacement and that apply for a permit pursuant to title 49, chapter 3, article 3 or 5 on or after September 30, 1992 shall be in compliance within six months after the effective date of the rules adopted pursuant to section 3-3512. Compliance with this article is a condition of the permit.

3-3514. Stage I rule effectiveness; enhanced enforcement

The associate director shall adopt rules to:

1. Enhance enforcement of the division's stage I vapor recovery program. The enforcement shall be enhanced through programs that may include increased frequency of or targeting of inspections, increased sampling frequency, use of portable analyzers or any other technique.

2. Establish standards and fees for required inspections of vapor recovery systems.

3-3515. Stage II vapor recovery systems

(Rpld. 10/1/18)

A. A person shall not offer for sale, sell, install or use a new gasoline vapor recovery system, or any new or rebuilt component parts of the system, unless the system or component part has been certified by the California air resources board as of March 31, 2001 or after that date, or has been approved by a third party accredited to test equipment and recognized by industry and the division, and has not been rejected by the division. The division shall maintain and keep current a list of stage II vapor

recovery systems and component parts that are approved by the division. Only those systems that are approved shall be used in this state. All certified vapor recovery components must be clearly identified by a permanent identification affixed by the certified manufacturer or rebuilder.

B. In an ozone nonattainment area designated as moderate, serious, severe or extreme by the United States environmental protection agency under section 107(d) of the clean air act or area A, an owner or operator of a gasoline dispensing site shall not transfer or allow the transfer of gasoline into a motor vehicle fuel tank at a gasoline dispensing site unless the gasoline dispensing site is equipped with a stage II vapor recovery system, unless the stage II equipment has been decommissioned in accordance with the procedures established pursuant to subsection H of this section. This subsection does not apply to gasoline dispensing sites with a throughput of less than ten thousand gallons per month, or to a gasoline dispensing site with a throughput of less than fifty thousand gallons per month in the case of an independent small business marketer of gasoline as defined in section 324 of the clean air act or to a gasoline dispensing site that is located on a manufacturer's proving ground. This subsection applies to gasoline dispensing sites that are located within area A but outside the Phoenix area Maricopa county ozone nonattainment area as defined in 40 Code of Federal Regulations section 81.303.

C. An owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing site subject to stage II vapor recovery requirements shall comply with the following:

1. Install all necessary stage II vapor recovery systems and make any modifications necessary to comply with the requirements.

2. Provide adequate training and written instructions to the operator of the affected gasoline dispensing site and the gasoline transport vehicle.

3. Replace, repair or modify any worn or ineffective component or design element to ensure the vapor-tight integrity and efficiency of the stage II vapor recovery systems.

4. Connect and ensure proper operation of the stage II vapor recovery systems whenever gasoline is being loaded, unloaded or dispensed.

5. Have the stage II vapor recovery system tested annually by a registered service representative licensed by the division.

D. Before the modification of any stage II vapor recovery system, the owner or operator of a gasoline storage tank, gasoline transport vehicle or gasoline dispensing

site shall obtain a plan review and approval from the division. The division shall prescribe forms for the application for the plan review and approval.

E. The operator of each gasoline dispensing site using a stage II vapor recovery system shall conspicuously post operating instructions for the system in the gasoline or oxygenated fuel dispensing area. The instructions shall clearly describe how to fuel vehicles correctly with the vapor recovery nozzles used at the station and shall include a warning that topping off may result in spillage or recirculation of gasoline or oxygenated fuel and is prohibited.

F. The division in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for the installation and operation of stage II vapor recovery systems. The division shall establish by rule plan review and approval fees. In establishing those rules and standards, the associate director shall consider requirements in other states to ensure that only state-of-the-art technology is used.

G. Approval of a stage II vapor recovery system by the division does not relieve the owner or operator of the responsibility to comply with other applicable statutes, codes and rules pertaining to fire prevention, environmental quality and safety matters.

H. The division in consultation with the department of environmental quality and the state fire marshal shall establish by rule standards for decommissioning stage II vapor recovery systems on or after October 1, 2016 but not later than September 30, 2018, or such dates as approved by the United States environmental protection agency in the state implementation plan revision for the removal of stage II vapor recovery systems submitted under section 110(l) of the clean air act, whichever is later. The rules must require removal of stage II vapor recovery systems no later than September 30, 2018, or the final removal date approved by the United States environmental protection agency in the state implementation plan revision for the removal of stage II vapor recovery systems submitted under section 110(l) of the clean air act, whichever is later. The division shall prescribe forms for the application for the plan review and approval. The division shall establish by rule plan review and approval fees.

I. All stage II vapor recovery systems and testing must remain in place until such systems are decommissioned pursuant to subsection H of this section.

J. The requirements prescribed for stage II vapor recovery systems pursuant to subsections A through E of this section do not apply to a retail station if the construction begins after April 22, 2014.

K. The requirements for stage II vapor recovery systems prescribed in subsections A through E of this section do not apply to an owner or operator who has decommissioned stage II vapor recovery equipment in accordance with the standards established by the division pursuant to subsection H of this section.

E-4

BOARD OF TAX APPEALS (F-17-0504)
Title 16, Chapter 3, Article 1, Tax Appeal Procedure

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-4**

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

FROM: Daniel P. Schwiebert, Legal Intern

DATE: April 18, 2017

SUBJECT: **BOARD OF TAX APPEALS (F-17-0504)**
Title 16, Chapter 3, Article 1, Tax Appeal Procedure

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Summary of the Rules

This five-year-review report from the Arizona Board of Tax Appeals (Board) covers the sole article in A.A.C. Title 16, Chapter 3, which relates to notice and procedure for hearings before the Board.

The article contains fourteen rules and provides definitions, filing requirements, hearing procedure, evidentiary allowances, and provisions for rehearing. The rules were adopted in 1974 and last-amended in 2002.

The Board is a quasi-judicial entity. It hears appeals taxpayers file to it after receiving adverse decisions from the Arizona Department of Revenue on matters concerning income, sales, luxury, estate, and other taxes.

Proposed Action

The Board has no action proposed for this article.

Substantive or Procedural Concerns

None.

ANALYSIS OF THE ANGENCY'S REPORT PURSUANT TO THE CRITERIA IN A.R.S. § 41-1056 AND R1-6-301:

1. **Has the agency certified that it is in compliance with A.R.S. § 41-1091?**

   Yes. The Board certifies it is in compliance with A.R.S. § 41-1091.

2. **Has the agency analyzed the rules' effectiveness in achieving their objectives?**

   Yes. The Board indicates that each rule effectively satisfies the objective of each rule.

3. **Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?**

   No. The Board indicates it has not received any written criticisms of the rules.

4. **Has the agency analyzed whether the rules are authorized by statute?**

   Yes. The Board cites to both general and specific authority for the rules. In pertinent, A.R.S. § 41-1003 provides that "each agency shall make rules of practice setting forth the nature and requirements of all formal procedure available to the public."

   However, the Board has indicated that it does not rely on specific authority for R16-3-111, regarding subpoenas. See paragraph 6 below, which notes that, in respect to this fact, the Board cannot enforce subpoenas.

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

   Yes. The Board indicates the rules are not inconsistent with any state or federal statutes or other rules of the agency.

6. **Has the agency analyzed the current enforcement status of the rules?**

   Yes. The Board indicates the rules are currently enforced without problems.

   However, the Board has also indicated it does not enforce the subpoenas it "issues" under R16-3-111. The Board has indicated that parties wishing to enforce these subpoenas must go to the Superior Court.

7. **Has the agency analyzed whether the rules are clear, concise, and understandable?**

   Yes. The Board indicates the rules are sufficiently clear, concise, and understandable. However, Staff believes substituting the word "issue" in R16-3-111 with the word "provide" will bring clarity to the public in light of paragraphs 4 and 6 above.

Staff also notes that the term "timely" in R16-3-102 is accompanied with an express clarification as to who makes that determination (the Board), while the same term used in R16-3-103 does not. Similarly, several rules use the term "upon showing of good cause," but do not provide a definition for the term or identify who ultimately makes that determination.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

No. The Board indicates the rules are not more stringent than corresponding federal laws.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license or agency authorization?

No. The rules were adopted in 1974, and last amended prior to 2010.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

No. However, the previous five-year-review report does not indicate a proposed course of action.

CONCLUSION

The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. The Board does not indicate any proposed amendments. This analyst recommends approval.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-4**

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

FROM: GRRC Economic Team

DATE: April 18, 2017

SUBJECT: **BOARD OF TAX APPEALS (F-17-0504)**
Title 16, Chapter 3, Article 1, Tax Appeal Procedure

I have reviewed the five-year-review report submitted by the Arizona Board of Tax Appeals (the Board) for Title 16, Chapter 3. An economic, small business, and consumer impact statement (EIS) was prepared as part of the rulemaking process. The five-year review reflected on this analysis. The following includes comments on the analysis provided for compliance with A.R.S. § 41-1056.

1. Economic Impact Comparison

Title 16, Chapter 3 of the Arizona Administrative Code establishes the rules regarding general administration of income, transaction privilege, use, luxury, and all other types of taxation. This excludes property taxes. The Board states in the five-year review that the economic impact for small businesses and consumers should be the same as when the rules were first promulgated. In the original costs and benefits analysis, the Board stated that the Board had 144 appeals in the previous fiscal year. The Board still affirms that the benefit of requiring these applicants to bring in 6 copies of their appeals outweighs the costs of printing the additional copies. Additionally, the Board affirms that the impact of requiring page and time limits for appeals has a positive benefit on the process.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Board determined that the rule imposes negligible burden and cost to those participating in the appeals process and its probable benefits outweigh its probable costs.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was received by the Board that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA BOARD OF TAX APPEALS
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
602.364.1102

February 23, 2017

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 north 15th Avenue, Suite 402
Phoenix, Arizona 85007

Dear Ms. Ong:

The State Board of Tax Appeals hereby submits its five-year rule review pursuant to A.R.S. § 41-1056.

The report consists of:

1) Summary of Five Year Review

2) Review Report on Each Rule

3) Attachment A – Authorizing Statutes

4) Attachment B – Agency Rules

5) Attachment C – Economic, Small Business and Consumer Impact Statement originally submitted when rules under review were promulgated.

The Board certifies that it is in compliance with substantive policy requirements in A.R.S § 41-1091.

If you have any questions or need additional information, please call Alisha L. Woodring or David V. Medina at 602.364.1102.

Sincerely,

Alisha L. Woodring,
Alisha L. Woodring
Executive Director

SUMMARY OF FIVE YEAR REVIEW

Pursuant to A.R.S. § 41-1056, the Arizona State Board of Tax Appeals ("Board") submits this five-year rule review. The review covers the rules in Title 16, Chapter Three of the Arizona Administrative Code, which pertains to the general administration of income, transaction privilege, use, luxury, and all other types of taxation, other than property tax.

After a comprehensive review and revision process that resulted in the repeal of most of the Board's previous rules, the current rules became effective February 7, 2002. The Board has carefully reviewed each of its rules and finds that: they all are currently being enforced; they are necessary, effective, consistent, concise and understandable; and, they require no revisions or amendments at this time.

- **Economic impact.**

The economic impact to small businesses and consumers under the Board's current rules should generally be the same as when the rules were promulgated.

TITLE 16

CHAPTER THREE

ARTICLE 1. TAX APPEAL PROCEDURES

After thoroughly reviewing its rules, the Board finds that the analysis for the following categories apply to all of the Board's rules.

AUTHORIZATION

A.R.S. § 41-1003 provides that each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public. The Board derives its general rule-making authority from A.R.S. §§ 42-1252 and 1253 and hears appeals from orders or decisions of the municipal tax code commission under A.R.S. § 42-6003(G). *See* attachment "A."

CONSISTENCY AND ENFORCEMENT OF THE RULE

This rule is necessary to accomplish the objective of the Board. It is not inconsistent with any state or federal statutes or other rules of the agency and is currently being enforced without problem.

CLARITY, CONCISENESS AND UNDERSTANDABILITY

This rule is sufficiently clear, concise and understandable.

WRITTEN CRITICISM

The agency has not received written criticism of the statute within the last five years

ECONOMIC IMPACT

Unchanged.

COMPETITVE IMPACT ANALYSIS

No analysis comparing this rule's impact on the state's business competitiveness to the impact on businesses in other states has been submitted to the Board.

BURDEN AND COST

The Board has determined that the rule imposes negligible burden and cost to those participating in the appeals process and its probable benefits outweigh its probable cost.

STRINGENCY

The rule is not more stringent than corresponding federal or state law.

PROPOSED COURSE OF ACTION

No action is proposed for this rule.

OBJECTIVE / EFFECTIVENESS

R16-3-101. Definitions

The objective of this rule is to establish the definitions for specific terms used throughout the Board's rules. The rule effectively satisfies this objective.

R16-3-102. Notice of Appeal

The objective of this rule is to specify the information and documentation that must be filed with a notice of appeal and when a notice of appeal must be filed. The rule effectively satisfies this objective.

R16-3-103. Incomplete Notice of Appeal

The objective of this rule is to explain the circumstances under which an incomplete notice of appeal may be supplemented with additional required material and the consequences of failing to comply with the provisions of the rule. The rule effectively satisfies this objective.

R16-3-104. Memoranda, Waivers, and Supporting Authorities

The objective of this rule is to apprise parties of the requirements, including deadline schedules, for filing supporting memoranda, waivers and supporting authorities. The rule effectively satisfies this objective.

R16-3-105. Stipulation or Statements of Fact

The objective of this rule is to inform the parties that the Board may request parties to file a joint stipulation or separate statements of fact. The rule effectively satisfies this objective.

R16-3-106. Dismissal, Withdrawal, or Suspension of Appeal

The objective of this rule is to explain the conditions under which an appeal may be dismissed, withdrawn or suspended. The rule effectively satisfies this objective.

R16-3-107. Request for Hearing

The objective of this rule is to explain under what conditions an oral hearing will be set and when, the notice the parties will receive, and the conditions under which a hearing may be waived, postponed, continued or cancelled. The rule effectively satisfies this objective.

R16-3-108. Hearing Procedure

The objective of this rule is to inform the parties of the specific procedures to be followed in a hearing before the Board. The rule effectively satisfies this objective.

R16-3-109. Evidence Produced at the Hearing

The objective of this rule is to explain the procedures for introducing oral and documentary evidence. The rule effectively satisfies this objective.

R16-3-110. Official Notice

The objective of this rule is to identify the kind of information and documentation of which the Board will take official notice. The rule effectively satisfies this objective.

R16-3-111. Subpoena

The objective of this rule is to explain the items for which a subpoena may be issued and who will bear the cost. The rule effectively satisfies this objective.

R16-3-113. Transcripts and Records

The objective of this rule is to explain under what conditions a hearing will be transcribed and who will bear the cost and how file information may be obtained. The rule effectively satisfies this objective.

R16-3-114. Decision or Order

The objective of this rule is to generally describe the Board's decisions and orders and the procedures regarding them. The rule effectively satisfies this objective.

R16-3-115. Rehearing or Review of Decision or Order

The objective of this rule is to advise parties of the procedure for requesting a rehearing or review of a decision. The rule effectively satisfies this objective.

TITLE 16. TAX APPEALS

CHAPTER 3. STATE BOARD OF TAX APPEALS LUXURY, TRANSACTION PRIVILEGE (SALES), USE, ESTATE, INCOME

ARTICLE 1. TAX APPEAL PROCEDURES

Section
R16-3-101. Definitions
R16-3-102. Notice of Appeal
R16-3-103. Incomplete Notice of Appeal
R16-3-104. Memoranda, Waivers, and Supporting Authorities
R16-3-105. Stipulation or Statements of Fact
R16-3-106. Dismissal, Withdrawal, or Suspension of Appeal
R16-3-107. Request for Hearing
R16-3-108. Hearing Procedure
R16-3-109. Evidence Produced at the Hearing
R16-3-110. Official Notice
R16-3-111. Subpoena
R16-3-112. Repealed
R16-3-113. Transcripts and Records
R16-3-114. Decision or Order
R16-3-115. Rehearing or Review of Decision or Order
R16-3-116. Renumbered
R16-3-117. Repealed
R16-3-118. Expired
R16-3-119. Repealed
R16-3-120. Repealed
R16-3-121. Renumbered
R16-3-122. Renumbered
R16-3-123. Renumbered
R16-3-124. Renumbered
R16-3-125. Renumbered
R16-3-126. Renumbered

ARTICLE 1. TAX APPEAL PROCEDURES

R16-3-101. Definitions

For purposes of this Article:

1. "Appellant," unless otherwise noted, means a taxpayer or the representative of a taxpayer, or other person or entity directly interested who is legally entitled to initiate proceedings before the Board.
2. "Board" means the State Board of Tax Appeals.
3. "Clerk" means the Clerk appointed by the Board to carry out the duties established by A.R.S. § 42-1252.
4. "Commission" means the Municipal Tax Code Commission.
5. "Day" means a calendar day. If the last day for filing a document under the provisions of this Article falls on a Saturday, Sunday, or legal holiday, the document is considered timely if filed on the following business day.
6. "Department" means the Arizona Department of Revenue.
7. "Hearing Officer" means a person appointed by the Board to take oral testimony and other evidence, make recommendations, and carry out the duties of the Board established by A.R.S. § 42-1252.
8. "Memorandum" means a document that supports a party's position.
9. "Notice of appeal" means a written request for correction or redetermination, including all applicable attachments.
10. "Notice of determination" means a written notification of a final decision or order issued by the Department or any other governmental entity from which an appeal to the Board may be taken.
11. "OAH" means Office of Administrative Hearings as established by A.R.S. § 41-1092.01.
12. "Quorum" means two members of the Board.
13. "Supporting authorities" means cases and authorities cited and relied on by a party.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Amended effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-102. Notice of Appeal

A. The Appellant shall sign the notice of appeal and mail or deliver the original and six copies to the Board's office in Phoenix, Arizona. The Board shall consider a notice of appeal received by mail filed on the date shown by its postmark. In the absence of a legible postmark, the Board shall determine whether an appeal was timely filed.

B. The Appellant shall legibly type, write, or print the notice of appeal and include the following information:

1. The Appellant's name, address, and telephone number. If there is a difference between the name on the notice of determination and the name on the notice of appeal, the notice of appeal shall contain an explanation of the difference;
2. The amount of money involved in the Department's determination, the type of tax, the year or other period for which the determination was made, and, if different from the determination, the approximate amount of money at issue in the appeal;
3. A statement of issues involved in the appeal;
4. A statement of errors the Appellant alleges the Department committed in the determination;
5. The relief sought; and
6. Whether a hearing is requested. The Appellant may waive a previously requested hearing within 10 days after the due date of the reply memorandum.

C. The Appellant shall file six copies of the notice of determination and any findings of fact or conclusions of law issued by the Department or the OAH with the notice of appeal.

D. The Appellant shall file the notice of appeal not more than 30 days after the final decision or order of the Department or the OAH becomes final.

E. In addition to the requirements in subsections (A) through (D), a notice of appeal regarding reimbursement for fees or other costs shall include six copies of the following:

1. The application that was submitted to the Department for reimbursement of fees or other costs.
2. Documentation of payment of fees or other costs.

F. If the notice of appeal is filed by a person aggrieved by an order or decision of the Municipal Tax Code Commission, the Appellant shall file a signed notice of appeal within 30 days after receiving the Commission's notice of the order or decision. The notice of appeal shall include the following information:

1. The name and address of each municipality;
2. The Appellant's name, address, and telephone number;
3. The applicable tax rate of each municipality;
4. A statement of issues involved in the appeal;
5. The relief sought; and

6. Whether a hearing is requested.

G. The Appellant shall submit six copies of any municipal ordinance involved in the appeal.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Amended effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-103. Incomplete Notice of Appeal

A. If the Appellant files a timely notice of appeal that is incomplete, the Clerk shall grant the Appellant 15 days to perfect the appeal.

B. Upon written request, the Clerk shall grant the Appellant a reasonable extension of time to comply with the provisions of this Section for good cause shown.

C. The Board may dismiss an appeal or exclude supplemental information for the Appellant's failure to act in a timely manner.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-103 renumbered and amended as Section R16-3-111, former Section R16-3-105 renumbered and amended as Section R16-3-103 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-104. Memoranda, Waivers, and Supporting Authorities

A. Each party shall file an original and six copies of any memoranda filed with the Board. The Board shall provide a copy to the opposing party.

B. A party may waive in writing the right to file a memorandum any time before the memorandum is due.

C. The Appellant shall file a memorandum of not more than 15 pages that addresses the facts and law in support of the appeal within 20 days after filing the notice of appeal.

D. The Department shall file a response memorandum of not more than 15 pages within 20 days after receiving the Appellant's memorandum or waiver.

E. The Appellant may file a reply memorandum of not more than 10 pages within 15 days after receiving the Department's memorandum. The Appellant's reply memorandum shall only address the issues of law or fact raised in the Department's memorandum.

F. Each party shall file six copies of cited supporting authorities at the time the party files a memorandum.

G. Upon written request, the Board may grant a reasonable extension of time for filing a memoranda upon good cause shown.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-104 renumbered and amended as Section R16-3-112, former Sections R16-3-106 and R16-3-107 renumbered and amended as Section R16-3-104 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-105. Stipulation or Statements of Fact

At the Board's request, the parties shall file a stipulation or separate statements of fact with any supporting affidavits or exhibits, listing the facts upon which they agree, the facts that are in dispute, and the reasons for the dispute. If there are no facts in dispute, this should be stated in the stipulation or statements.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-2-105 repealed, new Section R16-3-105 adopted effective January 7, 1977 (Supp. 77-1). Former Section R16-3-105 renumbered and amended as Section R16-3-103, former Section R16-3-108 renumbered and amended as Section R16-3-105 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-106. Dismissal, Withdrawal, or Suspension of Appeal

A. If the Board lacks jurisdiction regarding an appeal, the Board shall dismiss the appeal on its own motion or on motion by the Department.

B. The Appellant may withdraw an appeal upon written notification to the Board or by the parties' written stipulation at any time before the Board issues its decision.

C. The Board may suspend proceedings for a reasonable period of time at the written request of either party, the written stipulation of the parties, or its own discretion.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-106 repealed, new Section R16-3-106 adopted effective January 7, 1977 (Supp. 77-1). Former Section R16-3-106 renumbered and amended as Section R16-3-104, former Section R16-3-109 renumbered and amended as Section R16-3-106 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-107. Request for Hearing

A. The Board shall schedule a hearing at the written request of either party. Either party may waive appearance, in writing, at least 10 days before the hearing.

B. A hearing officer or one or more members of the Board shall hold the hearing, taking testimony and other evidence.

C. The Board shall send a written notice to the parties of the date, time, and location of the hearing at least 20 days before the hearing. The Board shall ordinarily schedule one hour hearings. Upon written request, and after consideration of the hearing schedule, the Board may grant a party additional time for the hearing if the request is filed with the Clerk within 10 days after the due date of the reply memorandum,

D. The Board may postpone, continue, or cancel a hearing for good cause upon the written request of either party if the request is submitted at least 10 days before the hearing.

E. If a hearing is not requested, the Board shall consider the appeal submitted for decision based on the record.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-107 renumbered and amended as Section R16-3-104, former Section R16-3-110 renumbered and amended as Section R16-3-107 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-108. Hearing Procedure

A. A hearing shall ordinarily proceed in the following manner:

1. The Appellant may make an opening statement.

2. The Department may make an opening statement or reserve its opening statement until the close of the Appellant's case.
3. The Appellant shall state its position and present its arguments and evidence.
4. The Department may make a previously-reserved opening statement, state its position, and present its arguments and evidence.
5. The Appellant may make a closing statement, presenting final arguments.
6. The Department may make a closing statement, presenting final arguments.
7. The Appellant may reply to the Department's closing statement or final arguments.

B. The Board may direct a party to submit an additional memorandum or information within a reasonable period of time. The Board shall grant the opposing party a reasonable period of time to respond to the additional memorandum or information.

C. The Board may recess or continue a hearing for good cause.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-108 repealed, new Section R16-3-108 adopted effective January 7, 1977 (Supp. 77-1). Former Section R16-3-108 renumbered and amended as Section R16-3-105, former Section R16-3-124 renumbered and amended as Section R16-3-108 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-109. Evidence Produced at the Hearing

A. The Board shall accept oral evidence only upon oath or affirmation.

B. Each party may call and examine witnesses, introduce exhibits, and cross-examine witnesses on any matter relevant to the appeal. The presiding officer at the hearing may call a party, or any other person who is present, to testify under oath or affirmation. The presiding officer and any member of the Board or its staff may question witnesses.

C. The Board may admit any relevant evidence, including affidavits and forms of hearsay evidence. The Board shall be liberal in admitting evidence but shall consider objections to the admission and comments on the weakness of evidence in assigning weight to the evidence.

D. The Board may admit carbon copies, photocopies, or copies made by similar procedures in place of original documents upon a showing of authenticity and proper foundation.

E. A party may substitute an exact legible copy for an exhibit upon written request if the request is submitted to the Board within 10 days after the hearing.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-109 renumbered and amended as Section R16-3-106, former Section R16-3-114 renumbered and amended as Section R16-3-109 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-110. Official Notice

A. The Board may take official notice of the following without the production of additional evidence:
1. Records maintained by the Board.
2. Tax returns filed with the Department for or on behalf of the Appellant or any affiliated company and related records on file with the Department.
3. Any fact that may be judicially noticed by the courts of this state.

B. The parties may, refute any matters officially noticed at any time before the Board's decision or order becomes final.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-110 repealed, new Section R16-3-110 adopted effective January 7, 1977 (Supp. 77-1). Former Section R16-3-110 renumbered and amended as Section R16-3-107, former Section R16-3-115 renumbered and amended as Section R16-3-110 effective August 27, 1980 (Supp. 80-4). Former Section R16-3-110 repealed; new Section R16-3-110 renumbered from R16-3-116 and amended by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-111. Subpoena

The Board may, at its discretion or upon written request submitted by a party at least 15 days before a hearing, issue subpoenas for the attendance of witnesses or the production of books, records, documents, or other evidence that is not confidential or privileged. A subpoena shall be served on behalf of and at the expense of the party requesting its issuance.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-111 renumbered and amended as Section R16-3-114, former Section R16-3-103 renumbered and amended as Section R16-3-111 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-112. Repealed

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-112 repealed, former Section R16-3-104 renumbered and amended as Section R16-3-112 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-113. Transcripts and Records

A. The hearing before the Board shall be transcribed upon written request submitted by a party to the Board at least five days before the hearing. The transcript shall be prepared at the expense of the requesting party.

B. A person shall not remove the records of the Board from its office for use as evidence or for other purposes. The Board shall provide certified copies of records as required under A.R.S. Title 39, Chapter 1.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-113 amended and former Section R16-3-123 renumbered and amended as Section R16-3-113 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-114. Decision or Order

A. If a quorum of the Board agrees on a decision or order, the Board shall issue the decision or order.

B. The Board shall issue all decisions or orders in writing and shall include separately-stated findings of fact and conclusions of law.

C. The Board shall mail, return receipt requested, or hand deliver a decision or order to the parties.

D. Except in the case of a tax dispute between municipalities, a decision or order is final 30 days after the Appellant receives it unless an aggrieved party files a motion for rehearing or review within 15 days after receipt.

E. In a dispute between municipalities, a decision or order is final on the date of receipt by the party. An aggrieved party has 30 days to appeal the decision or order of dismissal to the tax court.

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-114 renumbered and amended as Section R16-3-109, former Section R16-3-111 renumbered and amended as Section R16-3-114 effective August 27, 1980 (Supp. 80-4). Section repealed; new Section made by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-115. Rehearing or Review of Decision or Order

A. The Board may grant a rehearing or review of a decision or order based on a motion by an aggrieved party, or at its own discretion, for any of the following reasons:

1. The findings of fact, conclusions of law, order, or decision are not supported by the evidence or are contrary to law.
2. The party seeking review was deprived of a fair hearing due to irregularity in the proceedings, abuse of discretion, or misconduct of the prevailing party.
3. Accident or surprise which could not have been prevented by ordinary prudence.
4. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing.
5. Error in admission or rejection of evidence, or other errors of law occurring at the hearing or during the progress of the action.
6. The decision is the result of passion, bias or prejudice.

B. Enforcement of a decision of the Board is stayed pending a determination on the motion for rehearing or review. If a motion for rehearing or review is denied, the stay is automatically lifted. The decision becomes final 30 days after the Appellant is notified of the Board's action on the motion for rehearing or review.

C. The aggrieved party shall ensure that the motion for a rehearing or review is in writing and specifies the grounds upon which the motion is based. The aggrieved party may amend the motion at any time before the Board rules on it.

D. If the Board desires a response to the motion for rehearing or review from the opposing party, the Board shall notify the opposing party in writing and allow a reasonable period of time for preparation and filing of the response.

E. After granting a motion for rehearing or review, the Board may take additional testimony, amend findings of fact or conclusions of law, or make new findings or conclusions, and issue a new decision, depending on the particular circumstances of the appeal

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-115 renumbered and amended as Section R16-3-110, former Sections R16-3-116 and R16-3-117 renumbered and amended as Section R16-3-115 effective August 27, 1980 (Supp. 80-4). Former Section R16-3-115 repealed; new Section R16-3-115 renumbered from R16-3-121 and amended by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-116. Renumbered

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-116 renumbered and amended as Section R16-3-115, former Section R16-3-118 renumbered and amended as Section R16-3-116 effective August 27, 1980 (Supp. 80-4). Section R16-3-116 renumbered to R16-3-110 by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-117. Repealed

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Former Section R16-3-117 renumbered and amended as Section R16-3-115, former Section R16-3-119 renumbered and amended as R16-3-117 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-118. Expired

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-118 renumbered and amended as Section R16-3-116, former Section R16-3-120 renumbered and amended as Section R16-3-118 effective August 27, 1980 (Supp. 80-4). Section expired under A.R.S. § 41-1056(E) at 8 A.A.R. 4591, effective August 31, 2002 (Supp. 02-4).

R16-3-119. Repealed

Historical Note

Adopted effective December 30, 1974 Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-119 renumbered and amended as Section R16-3-117, former Sections R16-3-121 and R16-3-122 renumbered and amended as Section R16-3-119 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-120. Repealed

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-120 renumbered and amended as Section R16-3-118, former Section R16-3-125 renumbered and amended as Section R16-3-120 effective August 27, 1980 (Supp. 80-4). Section repealed by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-121. Renumbered

Historical Note

Adopted effective December 30, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Former Section R16-3-121 renumbered and amended as Section R16-3-119, former Section R16-3-126 renumbered and

amended as Section R16-3-121 effective August 27, 1980 (Supp. 80-4). Section renumbered to R16-3-115 by final rulemaking at 8 A.A.R. 836, effective February 7, 2002 (Supp. 02-1).

R16-3-122. Renumbered

Historical Note

Adopted effective December 24, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Renumbered and amended as Section R16-3-119 effective August 27, 1980 (Supp. 80-4).

R16-3-123. Renumbered

Historical Note

Adopted effective December 24, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Renumbered and amended as Section R16-3-113 effective August 27, 1980 (Supp. 80-4).

R16-3-124. Renumbered

Historical Note

Adopted effective December 24, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Renumbered and amended as Section R16-3-108 effective August 27, 1980 (Supp. 80-4).

R16-3-125. Renumbered

Historical Note

Adopted effective December 24, 1974 (Supp. 75-1). Amended effective January 7, 1977 (Supp. 77-1). Renumbered and amended as Section R16-3-120 effective August 27, 1980 (Supp. 80-4).

R16-3-126. Renumbered

Historical Note

Adopted effective January 7, 1977 (Supp. 77-1). Renumbered and amended as Section R16-3-121 effective August 27, 1980 (Supp. 80-4).

42-1253. Appeal to state board of tax appeals; definition

A. Except as provided in section 42-1254, subsection C, a person aggrieved by a final decision or order of the department under section 42-1251, article 3 of this chapter or section 42-2065, 42-2068, 42-2069, 42-2074, 42-2201 or 42-2202 may appeal to the state board of tax appeals by filing a notice of appeal in writing within thirty days after the decision or order from which the appeal is taken has become final.

B. The board shall take testimony and examine documentary evidence as necessary to determine the appeal, all pursuant to administrative rules to govern such appeals.

C. On determining the appeal the board shall issue a decision consistent with its determination. The board's decision is final on the expiration of thirty days from the date when notice of its action is received by the taxpayer, unless either the department or the taxpayer brings an action in tax court as provided in section 42-1254.

D. If the amount in any single dispute before the board is less than twenty-five thousand dollars, a taxpayer may be represented in that dispute before the board by:

1. A certified public accountant.

2. A person who is enrolled to practice before the United States internal revenue service and is recognized as an enrolled agent.

3. Any other person who is authorized by the taxpayer under a properly executed power of attorney and who was previously or is currently retained by the taxpayer for purposes other than representation in a hearing before the board.

E. If a practitioner who represents a taxpayer before the board pursuant to subsection D of this section fails to comply with an order or rule of the board, the board may impose sanctions including one or both of the following:

1. Order that the stipulation of the facts proposed by the department of revenue be accepted.

2. Suspend the practitioner from further practice before the board either for a specific period of time or until the board removes the suspension.

F. For the purposes of this section, "practitioner" means a person, other than a party, who files documents with or appears before the board in connection with a matter before the board.

42-1252. State board of tax appeals

A. The state board of tax appeals is established as an independent agency which shall not in any way be subject to the supervision or control of the department of revenue. The board shall have full power to hear and decide all appeals from decisions of the department of revenue.

B. The state board shall consist of three members appointed by the governor pursuant to section 38-211. Members shall be residents of this state.

C. Members shall be selected on the basis of their knowledge of and experience in taxation. Not more than two members may be primarily engaged in the same occupation or profession. The board shall handle all matters entrusted by law to it dealing with income taxation, estate taxation, transaction privilege, use and luxury taxation and any other taxation assigned to it by law and shall hear and decide appeals from the department of revenue on such matters.

D. Not more than two members of the board shall be members of the same political party. No member of the board shall hold any other public office under the laws of this state or any of its political subdivisions. No member shall be a candidate for an elective office under the laws of this state, nor of any other state. No member of the board shall hold any position of trust nor provide or engage in any occupation or business which would corruptly conflict with the duties of a member of the board, nor take part directly or indirectly in any election campaign in the interest of any political party or other organization or any candidate or measure to be voted on by the people. This subsection does not prohibit a person from properly and lawfully engaging in a business or profession.

E. The term of board members is six years. The member of the board having the shortest term remaining shall act as chairperson if that member has served on the board at least two years. If the member having the shortest term remaining does not qualify to act as chairperson or if two or more members have an equal right by virtue of their remaining terms to serve as chairperson, the board shall elect a chairperson. A member may not be appointed for more than two terms.

F. Each member of the board shall receive:

1. One hundred fifty dollars per day for time spent in the performance of official duties.

2. Such travel and other expenses as provided by law for other state officers.

G. The governor may remove any member for cause.

H. Subject to title 41, chapter 4, article 4, the board shall appoint a clerk, hearing officers and such other employees as it deems necessary to carry out its duties. The hearing officer qualifications shall be the same as the selection criteria for the members as prescribed by this section. Notwithstanding section 41-192, subsection D, upon request of the board, the attorney general shall designate, for such time and purposes as the board requires, an attorney, acceptable to the board, whose compensation shall be fixed and paid by the board.

I. The board shall hold hearings and meetings at the call of the chairperson or a majority of the board and otherwise as may be prescribed by the rules of the board as required to carry out its duties. The principal office of the board shall be at the capitol, but the board may sit or hold hearings at any other place within the state. A majority of the board constitutes a quorum for making orders and decisions or transacting other official business, and the board may act even though one position on the board is vacant. The board shall keep a record of its proceedings.

J. In conducting the business of the board:

1. The board may not act if more than one position is vacant.

2. One or more members or a hearing officer of the board may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board.

42-6003. Multi-municipal taxes; determination of municipality entitled to levy and collect taxes; appeal; definitions

A. Except as otherwise provided in this section, a taxpayer who has paid transaction privilege taxes on a transaction to an appropriate city or town, or qualified for an exemption from transaction privilege taxes under the ordinance of an appropriate city or town, is not required to pay transaction privilege taxes on the same transaction to any other city or town.

B. If a city or town asserts, in whole or in part, the right to a tax which was paid to an appropriate city or town, the cities and towns claiming the tax shall attempt to resolve allocation of the tax among themselves. Except as otherwise provided in this section, the taxpayer shall not be a party to the dispute but may be compelled to give evidence or produce books and records.

C. If a city or town asserts the right to tax a transaction which is exempt from transaction privilege taxes under the ordinance of an appropriate city or town, the city or town asserting the right to tax and the city or town which the taxpayer asserts is an appropriate city or town shall attempt to resolve which city or town has the superior jurisdictional claim. Except as otherwise provided in this section, the taxpayer shall not be a party to the dispute but may be compelled to give evidence or produce books and records.

D. If the cities or towns involved cannot resolve the dispute arising under subsection B or C, any city or town which is a party to the dispute may submit the issue to the municipal tax code commission for resolution. The taxpayer may intervene in any proceeding before the commission to assist in resolving the dispute. The commission shall determine which city or town has the superior jurisdictional claim, based upon its respective ordinances and common law principles related to transaction privilege taxation, and, if the taxpayer paid tax on the transaction, shall award the entire tax to the prevailing city or town.

E. If it is determined that the taxpayer should have paid taxes to a city or town with a higher tax rate than the city or town to which the tax was actually paid, the taxpayer is liable for the tax at the higher rate only on transactions occurring after the taxable month of the written notification requirement provided in subsection H.

F. If a city or town with a higher tax rate asserts a claim to transaction privilege taxes paid to an appropriate city or town with a lower tax rate, the taxpayer may submit the issue to the municipal tax code commission for resolution and may intervene as a party in a proceeding before the commission to resolve the dispute.

G. Any party aggrieved by an order or decision of the municipal tax code commission may appeal to the state board of tax appeals within thirty days after notice of the order or decision of the commission has been received by the party. Any party aggrieved by an order or decision of the state board of tax appeals under this section may appeal the order or decision to tax court but must commence such action within thirty days after notice of the order or decision of the state board has been received by the party.

H. Following an agreement among the cities or towns involved as to which city or town has jurisdiction over transaction privilege taxation on a transaction or following a final determination by the municipal tax code commission, the state board of tax appeals or the tax court that a city or town is entitled to collect such taxes, and following written notification to the taxpayer, the taxpayer shall thereafter pay transaction privilege taxes on similar transactions to that city or town.

I. In this section:

1. "Appropriate city or town" means a city or town in this state either:

(a) In which the business sales office which generated the taxable transaction is located.

(b) In which the purchaser resides, is located or is situated at the time of the transaction.

(c) Which imposes or claims the right to impose a transaction privilege tax on the transaction in question under its ordinance.

2. "Transaction privilege tax" means a municipal transaction privilege license tax, use tax or similar tax and includes for purposes of this section any penalty assessed by a city or town for nonpayment, delinquent payment or failure to timely report or file a return, and any interest assessed because of late payment of taxes.

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

E-5

DEPARTMENT OF ECONOMIC SECURITY (F-17-0505)
Title 6, Chapter 8, Article 1, Grievances and Hearings; Article 2, Adult Protective Service

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-5**

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

FROM: Chris Kleminich, Staff Attorney

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY (F-17-0505)**
Title 6, Chapter 8, Article 1, Grievances and Hearings; Article 2, Adult Protective Services

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This five-year-review report from the Arizona Department of Economic Security (Department) covers 27 rules in A.A.C. Title 6, Chapter 8, Articles 1 and 2, related to the Division of Aging and Adult Administration (Division).

The Division encompasses Adult Protective Services (APS), Community Action Programs and Services, Aging and Disability Services, and Area Agencies on Aging.

Substantive or Procedural Concerns

In the Department's 2012 five-year-review report on this chapter, the Department acknowledged issues with the rules in Article 1. In his memorandum to the Council, staff attorney Scott Cooley summarized the Department's proposed action as follows:

- R6-8-102: Provide more information regarding operation of complaint resolution procedures.
- R6-8-103: Provide more information relating to who may obtain administrative review.
- R6-8-104: Provide a more detailed explanation of the administrative review procedure.
- R6-8-105: Provide greater specificity about matters that may be appealed.
- R6-8-106: Address information that should be provided when filing an appeal.
- R6-8-109: Clarify that a hearing may be rescheduled for good cause and provide a time limit for making the request.
- R6-8-110: Clarify the circumstances and procedure that allow a party to request a change of hearing officer.
- R6-8-111: Clarify that a hearing officer has the authority to dismiss an appeal and elaborate on good cause procedures for reopening a hearing.
- R6-8-112: Clarify that a party must try to obtain information through voluntary means before requesting a subpoena and provide more detailed requirements for requesting a subpoena.

- R6-8-113: Clarify the powers of a hearing officer. Provide more detail with respect to rules of evidence used at the hearing and burden of proof.
- R6-8-116: Replace references to "Commissioner on Aging" with "Assistant Secretary on Aging."
- R6-8-117: Clarify the procedures for seeking review by the Appeals Board.

The proposed course of action was not completed, and none of the rules in Article 1 have been amended in the last five years. In the 2017 version of the report, however, the Department identifies no problems with the Article 1 rules. The Department indicates generally that it provides a clear explanation of grievance procedures on a form given to potential grievants, and has revised policy and practice to conform to and supplement the existing rules.[i]

While it is good for the Department to update and improve its policies, practices, and forms, staff does not agree with the Department's conclusion that rule changes are no longer necessary. Rules are laws, and laws cannot be overridden by an agency's change in policy or practice. To better understand the Department's position, this analyst has asked the Division to go through the proposals from 2012 and specifically indicate why each one is no longer necessary. That request has been rebuffed.

Staff is, therefore, unable to recommend approval of the portions of the report that relate to Article 1. In accordance with the standards laid out in A.R.S. § 41-1056(A), this analyst believes that the Department's findings, supporting reasons, and proposed course of action are inadequate.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. **<u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>**

   Yes. The Department has certified its compliance with A.R.S. § 41-1091.

2. **<u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>**

   Yes. The Department indicates that the following rules in Article 2 are not fully effective:

- Section 201: Definitions should be revised to reflect current policy and practice.
- Section 202: The rule should provide the public with information on methods for contacting the APS Central Intake Hotline.
- Section 203: Subsection 3 should include allegations of self-neglect as an eligibility criteria.
- Section 204: The rule should be combined into Section 203.
- Section 205: The rule should reflect that the Central Intake Hotline, rather than an APS employee, is responsible for receiving and classifying communications regarding alleged abuse, neglect, exploitation, or self-neglect of a vulnerable adult.

[i] Staff asked the Department to provide copies of the policies referred to in the report, and the policies have been included as attachments to the report.

- Section 206: Essential investigative tasks completed by the APS investigator, including assessment of the safety and risk of the vulnerable adult, should be included in the rule.
- Section 207: Language regarding a vulnerable adult's right to be included in case planning and decision-making should be clarified.
- Section 208: Language regarding a vulnerable adult's right to refuse APS services should be clarified.
- Section 209: The reasons for case closure should be revised to reflect current practice.

In addition, the Department believes that the effectiveness of Article 2 would be improved by adding a new rule outlining the rights of alleged perpetrators and victims.

3. Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?

Yes. The Department indicates that it has received no written criticisms of the rules during the last five years.

4. Has the agency analyzed whether the rules are authorized by statute?

Yes. The Department cites to A.R.S. § 41-1954(A)(3) as general authority for the rules, under which the Department must "[a]dopt rules it deems necessary or desirable to further the objectives and programs of the [D]epartment." In addition, A.R.S. § 46-134(A)(10) requires the Department to "[m]ake rules, and take action necessary or desirable to carry out the provisions of this title [Title 46, Welfare], that are not inconsistent with this title."

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

Yes. The Department indicates that the following rules in Article 2 are not fully consistent with Department policy:

- Section 201: Subsection 8 contains a definition of "information and referral" that is inconsistent with APS policy.
- Section 203: While the rule omits self-neglect as an eligibility criterion for APS, allegations of self-neglect are currently investigated provided they meet other eligibility criteria.
- Section 205: As currently written, this rule could be interpreted incorrectly to allow any APS worker to receive and classify incoming communications.

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

Yes. The Department indicates that the rules are enforced as written. Staff believes that such a conclusion is inconsistent with the Department's statements related to its current policies and practices.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that Article 2 is not fully clear, concise, or understandable due to a lack of information related to the rights of alleged perpetrators and victims.

8. Stringency of the Rules:

a. Are the rules more stringent than corresponding federal law?

While the report alludes generally to the Older Americans Act of 1965 (42 U.S.C. § 3001 *et seq*.), the Department does not identify any federal laws which directly correspond to the rules.

b. If so, is there statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010:

a. Do the rules require issuance of a regulatory permit, license, or agency authorization?

No. The rules do not require issuance of a regulatory permit, license, or agency authorization.

b. If so, are the general permit requirements of A.R.S. § 41-1037 met or does an exception apply?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. As described above, the Department did not complete the proposed course of action for Article 1.

For Article 2, the Department indicates that it completed the proposed course of action when it amended R6-8-201, R6-8-204, R6-8-205, R6-8-206, and R6-8-210 in December 2012.

Conclusion

Staff recommends that the Council return the portions of the report that relate to Article 1. In addition, staff recommends that, in accordance with A.R.S. § 41-1056(E), the Council consider the question of whether the rules in Article 1 are materially flawed.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-5**

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

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF ECONOMIC SECURITY (F-17-0505)**
Title 6, Chapter 8, Article 1, Grievances and Hearings; Article 2, Adult Protective Services

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I have reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. Economic Impact Comparison

The economic, small business, and consumer impact statement (EIS) was not available for Article 1. The EIS from the Department's rulemaking in 2012 was reviewed for Article 2. The Article 1 rules reviewed address the procedures involved in administering the grievances and hearings for the Department's Division of Aging and Adult Services. The Division of Aging and Adult Services helps older Arizonans live with dignity and independence. The Article 2 rules reviewed address the procedures used by Adult Protective Services (APS). APS is the investigative branch of the Division that investigates incidents of abuse, neglect, self-neglect, or exploitation of vulnerable adults.

Key stakeholders that are impacted are the Department, taxpayers, older Arizonans, and their advocates. The Department notes that no grievances have been filed since Fiscal Year 2012. In FY 2016, the Division of Aging and Adult Services provided services to 353,095 individuals. In FY 2016, APS received 28,961 phone inquiries and 13,096 written inquiries. 11,629 were accepted as reports and investigated. The Department concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Articles cited above.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department concludes that the rules in Article 1 impose the least burden and costs to persons regulated by the rules. The Department intends to ask for an exception to the moratorium in order to amend the rules in Article 2, so they reflect current policy and practice. Once the rules

in Article 2 are amended, they will impose the least burden and costs to individuals regulated by the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the Department by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, the economic staff concludes that the report complies with A.R.S. § 41-1056.

DEPARTMENT OF ECONOMIC SECURITY
Your Partner For A Stronger Arizona

Douglas A. Ducey
Governor

Henry Darwin
Interim Director

FEB 22 2017

RECEIVED
FEB 28 2017
GRRC

Nicole A. Ong, Council Chair
Governor's Regulatory Review Council
Department of Administration
100 North 15th Avenue, Suite 402
Phoenix, Arizona 85007

Ms. ~~Ong:~~ Nicole

Enclosed is the Arizona Department of Economic Security's Five-year Review Report on A.A.C. Title 6, Chapter 8, Aging and Adult Administration. Included with the report are copies of the authorizing statutes, rules, and the economic impact statement associated with these rules.

Pursuant to A.R.S. § 41-1056(A) and A.A.C. R1-6-301(C)(4), the Department certifies that it is in compliance with A.R.S. § 41-1091.

Thank you for your attention to this report. The Department will be present at the Council meetings to repond to any questions the Council members may have about the report. If you have any questions, or require more information, please contact Anthony Hill, Rules Analyst, Policy and Planning Administration, at (602) 542-2067.

Sincerely,

Henry Darwin
Interim Director

Enclosure: Five-year Review Report for A.A.C. Title 6, Chapter 8, Aging and Adult Administration

Arizona Department of Economic Security

Five-Year Review Report

Title 6. Economic Security

Chapter 8. Aging and Adult Administration

Article 1. Grievances and Hearings

Article 2. Adult Protective Services

February 28, 2017

Introduction

The Older Americans Act of 1965 (42 U.S.C. § 3001 *et seq*.) was enacted to give older Americans increased opportunities to participate in the benefits of American society. The Act was aimed at improving the lives of older persons in the areas of income, health, housing, employment, retirement, and community services. Created during a time of rising societal concerns for the poor and disadvantaged, the Act affirmed the nation's sense of responsibility toward the well-being of older citizens.

The Division of Aging and Adult Services provides an array of services to help people achieve and maintain the highest level of independence and self-sufficiency. Services and programs reach a diverse population of Arizonans from homeless youth to older adults. The Division's programs provide a safety net of services to the community, working to ensure safety and self-sufficiency so that all Arizonans can live with dignity and independence throughout their lives.

The Division is comprised of the following units:

- Adult Protective Services – Adult Protective Services (APS) receives and investigates incidents of abuse, neglect, self-neglect, or exploitation of vulnerable adults, and suggests appropriate services based on individual needs and the individual's willingness to accept services. The APS Central Intake Hotline allows the public to report allegations of abuse, neglect, self- neglect, and exploitation of vulnerable adults, at any time through telephone or online.

- Community Action Programs and Services – These units strengthen the safety net for vulnerable and at-risk individuals and families through community engagement.

These programs include the Short-Term Crisis Services and the Energy Assistance Program.

- Aging and Disability Services – This unit is comprised of programs that serve to protect the rights of older adults, prevent fraud and abuse against older adults, and provide information and assistance on benefits and options, including Medicare, while providing Home and Community Based Services to ensure aspects of healthy and independent living.
- Area Agencies on Aging – In order to accomplish its mission, the Division works with eight Area Agencies on Aging (AAA). These agencies serve as advocates for clients, and work to develop a comprehensive service delivery system that most accurately reflects the needs of the local community. The AAAs have a responsibility to ensure that support and nutrition services are available to older persons in local communities. The Older Americans Act funds AAAs to implement, coordinate, and expand services. Some services are delivered through multi-purpose senior centers that provide home-delivered meals, group meals at the centers, and education, information, and referral activities. Arizona's AAAs served 301,000 individuals in the past federal fiscal year.

CHAPTER 8. DEPARTMENT OF ECONOMIC SECURITY

AGING AND ADULT ADMINISTRATION

A. STATUTORY AUTHORITY

General Authority: A.R.S. §§ 41-1954(A)(3), 41-1003, and 46-134(A)(10).

Specific Authority: A.R.S. §§ 41-1954(A)(1)(b); 41-1991 to 41-1995; 46-182; 46-191 to 46-193; 46-451 to 46-459.

B. OBJECTIVES

Article 1 – Grievances and Hearings

R6-8-101. Definitions

The objective of this rule is to promote uniform understanding of the terminology used by the Division of Aging and Adult Services. The purpose of this rule is to clearly define the terms used in Article 1.

R6-8-102. Client Complaint Resolution Procedures

The objective of this rule is to require each area agency to have a written complaint resolution procedure. The purpose of this rule is to provide the public with a procedure to grieve issues with program services or denial of benefits.

R6-8-103. Right to Review

The objective of this rule is to explain who may request an administrative review. The purpose of this rule is to identify which actions are eligible for administrative review.

R6-8-104. Administrative Review Procedures

The objective of this rule is to provide administrative review procedures. The purpose of this rule is to explain the procedures to initiate an administrative review.

R6-8-105. Right to Appeal

The objective of this rule is to allow a client to appeal an administrative review decision. The purpose of this rule is to specify a client may appeal a decision by a contracted service provider or of the program administrator.

R6-8-106. Filing an Appeal

The objective of this rule is to provide appeal procedures. The purpose of this rule is to explain the process to the public to file an appeal.

R6-8-107. Service on Parties

The objective of this rule is to identify how documents will be served to parties. The purpose of this rule is to explain that all documents will be served by mail.

R6-8-108. Time

The objective of this rule is to explain the computation of time. The purpose of this rule is to provide the public with a clear understanding of deadlines when filing an appeal.

R6-8-109. Scheduling and Notice of Hearing

The objective of this rule is to explain how hearings are scheduled, and how the Department will give notice to the parties. The purpose of this rule is to explain the hearing schedule and the hearing notice.

R6-8-110. Change of Hearing Officer

The objective of this rule is to explain that a party may request a change of hearing officer. The purpose of this rule is to describe the procedure to request a change of hearing officer.

R6-8-111. Failure of a Party to Appear

The objective of this rule is to identify a procedure when a party fails to appear for a hearing. The purpose of this rule is to explain how a party may reschedule a hearing.

R6-8-112. Subpoena of Witnesses and Documents

The objective of this rule is to explain how a hearing officer may subpoena witnesses and documents. The purpose of this rule identifies a subpoena's contents and delivery method.

R6-8-113. Conduct of Hearing

The objective of this rule is to explain how to conduct a hearing. The purpose of this rule is to identify the hearing procedure the parties will follow.

R6-8-114. Hearing Decision

The objective of this rule is to explain how to issue a hearing decision. The purpose of this rule identifies the contents of a hearing decision.

R6-8-115. Termination of Appeal

The objective of this rule is to explain how to terminate an appeal. The purpose of this rule is to identify the process for terminating an appeal.

R6-8-116. Appeal to the Commissioner on Aging

The objective of this rule is to explain that an appeal may be made to the Commissioner on Aging. The purpose of this rule is to describe how an appeal is made to the Commissioner on Aging.

R 6-8-117. Review by the Appeals Board

The objective of this rule is to provide for the appeal of certain cases to the Appeals Board. The purpose of this rule is to identify which cases may be appealed and the appeals procedure.

<u>Article 2 – Adult Protective Services</u>

R6-8-201. Definitions

The objective of this rule is to promote uniform understanding of the terminology used by APS. The purpose of this rule is to clearly define the terms used in Article 2.

R6-8-202. Reporting Requirements for Adult Protective Services Cases

The objective of this rule is to explain reporting requirements for APS cases. The purpose of this rule is to identify the information APS will obtain from reporting parties.

R6-8-203. Eligibility for Services

The objective of this rule is to explain the eligibility requirements for APS. The purpose of this rule is to identify which individuals may receive services.

R6-8-204. Jurisdiction

The objective of this rule is to specify the jurisdictional requirements for APS. The purpose of this rule is to establish that APS may only investigate incidents within the state and on Tribal lands, with written permission from the Tribal council.

R6-8-205. Classification

The objective of this rule is to explain how incoming communications are classified. The purpose of this rule is to distinguish between informational communications and those requiring investigation.

R6-8-206. Investigation

The objective of this rule is to explain how APS reports are evaluated. The purpose of this rule is to establish procedures for how investigators will assess vulnerable adults and identify an adult's needs.

R6-8-207. Case Planning

The objective of this rule is to explain how an investigator shall maintain a case plan for vulnerable adults in need of protective services. The purpose of this rule is to establish the contents of a vulnerable adult's case plan and the adult's right to be involved in the case plan.

R6-8-208. Refusal of Services by the Adult or Guardian

The objective of this rule is to explain the procedures when an adult refuses adult protective services. The purpose of this rule is to establish an adult's right to refuse APS involvement and the actions APS may take if it believes an adult is in need of services.

R6-8-209. Case Closure

The objective of this rule is to explain when APS may close a case. The purpose of this rule is to establish a criteria to close a case.

R6-8-210. Confidentiality

The objective of this rule is to explain the Department's confidentiality procedures for APS cases. The purpose of this rule is to establish a process to request confidential information.

C. EFFECTIVENESS

Article 1 – Grievances and Hearings

The rules in Article 1 are effective in meeting their objectives.

Article 2 – Adult Protective Services

With the exception of the issues raised below, the rules in Article 2 are effective in meeting their objectives.

R6-8-201. Definitions

This rule would be more effective if subsection 8 "Information and referral," were deleted as it is inconsistent with current policy and practice. This rule would be more effective if subsections 9 "Intake," and 18 "Report," were revised to reflect current policy and practice. The addition of several definitions including, but not limited to, definitions for incoming communication, screening, incapacitated adult, vulnerable adult, maltreatment, abuse, neglect, and exploitation would further strengthen the effectiveness of this rule by promoting consistency in the use and understanding of terminology.

R6-8-202. Reporting Requirements for Adult Protective Services Cases

This rule would be more effective if it provided the public with information on methods for contacting the APS Central Intake Hotline, including through telephone or online reporting.

R6-8-203. Eligibility for Services

This rule would be more effective if subsection 3 was amended to include allegations of self-neglect as an eligibility criteria to reflect current policy and practice.

R6-8-204. Jurisdiction

This rule would be more effective if it were combined into R6-8-203, which identifies jurisdiction as a criteria for service eligibility.

R6-8-205. Classification

This rule would be more effective if it were revised to reflect current policy and practice that the Central Intake Hotline, rather than an APS worker, is responsible for receiving and classifying communications regarding alleged abuse, neglect, exploitation, or self-neglect of a vulnerable adult. The effectiveness of this rule would be further enhanced through outlining the actions taken by the Central Intake Hotline for report and non-report communications to ensure appropriate and timely response.

R6-8-206. Investigation

This rule would be more effective if it were revised to include essential investigative tasks completed by the APS investigator, including assessment of the safety and risk of the vulnerable adult.

R6-8-207. Case Planning

This rule would be more effective if the language regarding the vulnerable adult's right to be included in case planning and decision-making was clarified.

R6-8-208. Refusal of Services by the Adult or Guardian

This rule would be more effective if the language regarding the vulnerable adult's right to refuse APS services was clarified.

R6-8-209. Case Closure

This rule would be more effective if the reasons for case closure were revised to reflect current practice.

Proposed Rules to Increase Effectiveness

Article 2 currently does not contain any information regarding the rights of alleged perpetrators and contains only minimal information regarding the rights of alleged victims in APS investigations. The Department recommends strengthening the effectiveness of this Article through the inclusion of a new rule outlining the rights of alleged victims and perpetrators. The purpose of this new rule would be to establish consistent treatment of alleged victims and perpetrators and provide alleged victims and perpetrators with notice of their rights.

D. CONSISTENCY

Article 1 – Grievances and Hearings

The rules in Article 1 are consistent with state and federal law that are applicable to this Article. The rules in Article 1 are consistent with Department policy.

Article 2 – Adult Protective Services

The rules in Article 2 are consistent with state law. There is no applicable federal law to this Article. The rules in Article 2 are consistent with Department policy, with the following exceptions noted in Section C above:

R6-8-201. Definitions

Subsection 8 of this rule contains a definition of "Information and referral" that is inconsistent with APS policy.

R6-8-203. Eligibility for Services

This rule omits self-neglect as an eligibility criteria for APS. Under current APS policy, allegations of self-neglect are investigated provided they meet other eligibility criteria.

R6-8-205. Classification

This rule is inconsistent with APS policy which designates the APS Central Intake Hotline with responsibility for receiving and classifying communications regarding alleged abuse, neglect, exploitation, or self-neglect of a vulnerable adult. As currently written, this rule could be interpreted that any APS worker could receive and classify incoming communications.

E. ENFORCEMENT

Article 1 – Grievances and Hearings

The Department enforces the rules in Article 1 as written.

Article 2 – Adult Protective Services

The Department enforces the rules in Article 2 as written.

F. CLEAR, CONCISE AND UNDERSTANDABLE

Article 1 – Grievances and Hearings

Article 1 is clear, concise, and understandable.

Article 2 – Adult Protective Services

Article 2 is not clear, concise, or understandable due to lack of information related to client and alleged perpetrator rights, as discussed in Section C above.

G. WRITTEN CRITICISMS

The Department has not received any written criticisms of the rules in Articles 1 or 2.

H. ECONOMIC IMPACT COMPARISON

The Department does not have an Economic Impact Statement for Article 1 because the rules have not been amended since 1993. The Department submitted an Economic Impact Statement for Article 2 with the Five-Year Review Report in 2012, which has been attached. It was estimated that the rules would have minimal cost. The estimation submitted in 2012 was accurate, and the rules have not had a significant cost impact.

Article 1 – Grievances and Hearings

Individuals Served:

In State Fiscal Year (SFY) 2016, the Division of Aging and Adult Services served 353,095 through its programs. The Community Action Programs and Services served 31,263 individuals and 321,832 individuals were assisted by Aging and Disability Services

Employees:

There were approximately 10 Full Time Equivalents with the Aging and Disability Services, and 3 Full Time Equivalents in the Community Action Programs and Services in SFY 2016.

Funding:

The Division's budget was approximately $104 million in SFY 2016.

Grievances and Hearings:

There were 5 grievances filed from SFY 2012 to date. All grievances were resolved by administrative review.

Article 2 – Adult Protective Services

Individuals Served:

In SFY 2016, the APS Central Intake Hotline received 28,961 inquiries to its general resource, report, and law enforcement phone lines. Of those, 25,964 calls (90 percent) were answered by an Intake Specialist. During this same period, APS received 13,096 written inquiries (online, mail, and fax) regarding suspected maltreatment of a vulnerable adult. In SFY 2016, the number of communications entered into the APS case management system involving vulnerable adult abuse reached an all-time high of 21,654. This represents a 62 percent increase since SFY 2012. Of these communications, 11,629 (54 percent) were accepted as reports and investigated. Of the reports investigated in SFY 2016, 7,596 reports (65 percent) contained an allegation of neglect, including individuals who were unable to meet their own basic needs due to their vulnerability; 3,138 reports (27 percent) contained an allegation of abuse; and 2,460 (21 percent) contained an allegation of exploitation. A report may contain more than one type of allegation, thus the percentages total more than 100 percent.

Employees:

There were approximately 215 Full Time Equivalents in the APS program in SFY 2016, including Central Intake, field investigations, program administration, and support staff.

Funding:

The funding to operate the APS program has no dedicated federal funding and is reliant on state funds. DES does supplement the APS operating budget with federal Social Services Block Grant funds when available. The APS operating budget was $13.9 million in SFY2016.

I. BUSINESS COMPETITIVENESS ANALYSIS

The Department did not receive a business competitive analysis from a member of the public during the process of preparing this report.

J. COURSE OF ACTION FROM PREVIOUS 5-YEAR REVIEW REPORT

Article 1 – Grievances and Hearings

The previous 5-year review report stated Article 1 required amendment to provide further comprehensive information on complaint and administrative review procedures. The Department received a regulatory moratorium exception in 2009, allowing revision of Article 1. In 2010, the Governor's Office placed a hold on the exception and Article 1 underwent no further revisions. The Department revised policy and practice to conform to and supplement the existing rules. Additionally, the Department provides a clear explanation of grievance procedures on a form given to potential grievants and has observed that method helps make the grievance process clear and accessible for potential grievants. The Department reviewed Article 1 in preparing for this report and concluded that the rules require no revision and are functioning effectively.

Article 2 – Adult Protective Services

The Department completed the course of action from the previous 5-year review for Article 2. The Notice of Final Rulemaking for Article 2 (18 A.A.R. 2716) was approved by the Governor's Regulatory Review Council on October 2, 2012, effective December 2, 2012. This rulemaking amended Rules R6-8-201, R6-8-204, R6-8-205, R6-8-206, and R6-8-210.

K. DETERMINATION OF BURDEN AND COSTS

Article 1 – Grievances and Hearings

The Department observes that the rules as written are effective and impose the least amount of burden and costs to the public.

Article 2 – Adult Protective Services

The Department believes that the rules will impose the least burden and costs to persons regulated by the rules, once changes indicated in the report to Article 2 are made.

L. PROPOSED ACTION

Article 1 – Grievances and Hearings

The Department does not propose any action on Article 1.

Article 2 – Adult Protective Services

As previously stated in Sections C and D, the Department believes Article 2 requires amendment to the current rules and creation of new rules. Amendments to Rules R6-8-201 through R6-8-209 would reflect current policy and practice, and clarify APS's responsibilities during investigations and case planning. New rules would further delineate the rights of vulnerable adults and alleged perpetrators during investigations. The Department is preparing to seek an exception from the regulatory moratorium to amend Article 2. The Department anticipates filing a Notice of Final Rulemaking with the Council in February, 2019, contingent upon receiving a moratorium exception.

1000	Area Agency on Aging Administrative Standards
1000	**Overview**
	This chapter provides an outline of the Division of Aging and Adult Services policies and procedures for the Area Agency on Aging Administrative Standards, Reporting and Functions.

1900	Administrative Mandates
1901	**Overview**
	This chapter provides an outline for the Division of Aging and Adult Services operational policies and procedures for Administrative Mandates. Administrative Mandates include Confidentiality and Disclosure of Information, Unusual Incident Reporting, Client Complaints, Grievances and Appeals.

1910	Confidentiality and Disclosure of Information
1910	**Overview**
	The Division of Aging and Adult Services maintains the confidentiality of the clients served under the programs of the Division. This section provides an outline for the Division of Aging and Adult Services operational principles and procedures on minimum standards for addressing confidentiality and disclosure of information regarding clients receiving services funded under an approved Area Plan on Aging. This policy chapter is subject to change as additional information and/or regulations are received from the State of Arizona and the U.S. Department of Health and Human Services, Administration on Aging.

1910	Confidentiality and Disclosure of Information		
1911	**Authority and Statutory Requirements**		
	1911.1	The information in this section is authorized and governed by the following statutes and regulations:	
		A	Older Americans Act of 1965, as Amended in 2006, P.L. 109-365, § 102, § 305, § 306, § 307, § 308, § 314, § 315, § 321, § 705, § 712, § 721, and § 764; http://www.aoa.gov/AoARoot/AoA_Programs/OAA/oaa_full.asp

1910	Confidentiality and Disclosure of Information		
1911	**Authority and Statutory Requirement**		
	1911.1	B	Code of Federal Regulations, Title 45 Public Welfare, C.F.R. §1321.11 and §1321.51 http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title45/45cfr1321_main_02.tpl
		C	The Freedom of Information Act, 5 U.S.C. § 552 As Amended By Public Law No. 110-175, 121 Stat. 2524 (2007) http://www.gpo.gov/fdsys/pkg/PLAW-110publ175/pdf/PLAW-110publ175.pdf
		D	Health Insurance and Portability Act of 1996 P.L. 104-191 http://aspe.hhs.gov/admnsimp/pl104191.htm
		E	A.R.S. §41-1959, §41-1991 thru §41-1995 http://www.azleg.state.az.us/ArizonaRevisedStatutes.asp?Title=41, §46-454 http://www.azleg.state.az.us/ars/46/00454.htm § 46- 41 http://azleg.gov/FormatDocument.asp?inDoc=/ars/46/00141.htm&Title=46&DocType=ARS
		F	Arizona Administrative Code, Title 6, Chapters 5, 8 and 13 http://www.azsos.gov/public_services/Title_06/06_table.htm
		G	Department of Economic Security Policy - Unusual Incident Reporting 1-07-02A http://intranet/appFiles/Policies/pdf/DES-1-07-02A.pdf and 1-07-02B http://intranet/appFiles/Policies/pdf/DES-1-07-02B.pdf
	1911.2	The Area Agency on Aging must ensure that service providers comply with the following:	
		A	A fingerprint based criminal background check shall be completed at time of hire, or as a result of reassignment after hire, on employees and volunteers who have direct contact with juveniles or vulnerable adults including those who are mentally disabled, frail, or have a chronic disease that puts them at risk for abuse (see A.R.S. § 46-141). See also the Arizona Department of Economic Security Special Terms and Conditions - ProFleet and Equipment Services / Optional Auto / Children-Vulnerable Adult / Bonding Area Agency on Aging, section 5.

1910	Confidentiality and Disclosure of Information		
1912	**Operational Procedures for Confidentiality and Disclosure of Information**		
	1912.1	An Area Agency on Aging, or entity that such agency has contracted with, shall comply with all applicable State and Federal statutes, rules and regulations regarding the confidentiality, use, or disclosure of applicant or client information.	
	1912.2	An Area Agency on Aging must have in place procedures to ensure that no information about a client is disclosed by the entity that such agency has contracted with, without the informed consent of the client.	
	1912.3	An Area Agency on Aging, or entity that such agency has contracted with, is not required to disclose types of information or documents that are exempt from disclosure by a Federal agency under the Federal Freedom of Information Act.	
	1912.4	An Area Agency on Aging shall not require the entity that such agency had contracted with to provide legal services assistance to reveal any information that is protected by attorney-client privilege.	
	1912.5	The following information is considered confidential:	
		A	The names and addresses of applicants and recipients of service.
		B	The type of services provided.
		C	Information related to the social and economic conditions or circumstances of an individual.
		D	Agency evaluation of information about an individual.
		E	Medical data, including diagnosis, past history of disease or disability of an individual.
		F	Personally identifiable information entered in the Aging Information Management System (AIMS).
	1912.6	Confidential information shall not be released except under the following conditions:	
		A	To the extent necessary to make claims for public or private assistance or benefits on behalf of the client.
		B	Referrals to Adult Protective Services, as required in A.R.S. 46-454.
		C	Referrals to law enforcement if a crime may be committed or that a crime has been committed, unless this is privileged information.
		D	Written request is made by the applicant, client, or legal guardian. Only information that relates directly to the client shall be released.
		E	An emergency situation arises and it is in the best interest of the applicant or client that information is disclosed. The information disclosed and to whom shall be recorded in the case record and the applicant or client shall be notified promptly.
		F	Information is requested by persons or agency representatives who are subject to standards of confidentiality comparable to those contained in this chapter. The information disclosed and to whom shall be recorded in the case record and the applicant or client shall be notified promptly.

1912	**Operational Procedures for Confidentiality and Disclosure of Information (continued)**		
	1912.7	Disclosure of confidential information as identified in section 1912.6 shall be specific and time limited and must be documented in a case record. Documentation in case records must identify the following:	
		A	The information that was disclosed. A copy of the written release of information from the party seeking the information shall be part of the case record.
		B	To whom the information was disclosed.
		C	The purpose of the disclosure.
		D	The date and time the information was disclosed.
		E	The name of the individual who made the disclosure to the requesting party.
	1912.8	When monitoring entities funded under an approved Area Plan on Aging, an Area Agency on Aging shall not require the entity that such agency has contracted with to disclose information or data about applicants or clients which is not pertinent to the service furnished or payment made. The Area Agency on Aging should use the least intrusive methods possible to obtain the information necessary to fulfill monitoring activities.	
	1912.9	Legal assistance providers shall not be required to disclose the information which would be considered privileged and which may include “revealing information relating to the representation of a client, unless the client consents, after consultation, except for disclosures that are implicitly authorized in order to carry out the representation.” Legal assistance providers are legally and ethically prohibited from disclosing information that could identify clients to Area Agency on Aging, or other funding sources. However, there are other types of information that can be released for monitoring purposes and which would not be considered “privileged” as defined by ethical obligations set forth in the Canons of Ethic of the State Bar of Arizona. The following are examples of non-privileged information:	
		A	Pleadings, memos, or other data filed with the courts.
		B	Legal documents which have been recorded.
		C	Names, addresses, telephone numbers and narratives of the legal problem if the client provided such information previously to the Area Agency on Aging if it was the agency making the referral to the legal service provider.
		D	Court orders, minutes, entries and other court or public records.
		E	Collected statistical information not identified to a particular client which may include types of services, disposition of cases, type of cases and units of service.
		F	Information that the client has made public through another source, example: client files a complaint about a legal service delivered by another agency or the Area Agency on Aging.

	1910	Confidentiality and Disclosure of Information
1913	**Operational Procedures for Storage of Confidential Information**	
	1913.1	An Area Agency on Aging, or entity that such agency has contracted with, shall ensure the confidentiality of client information. Confidential information shall be maintained in locked files. If electronic records are utilized, confidential information must be secured.
	1913.2	An Area Agency on Aging shall ensure that the entity that such agency has contracted with retain all data and other records relating to the performance of the contract for a period of five years after the completion of the contract.

	1920	Client Complaint, Administrative Review, and Appeals
1920	**Overview**	
	1920.1	This chapter provides an outline for the Division of Aging and Adult Services operational principles and procedures on minimum standards that must be included in policies and procedures developed by Area Agency on Aging which address an individual or their responsible person's (hereafter referenced as individual) complaint, administrative review, and appeals process. This policy chapter is subject to change based upon revisions of the Arizona Administrative Code.

	1920	Client Complaint, Administrative Review, and Appeals
1921	**Operational Procedures for Area Agency on Aging Requirements**	
	1921.1	Area Agency on Aging shall develop and maintain policies and procedures which address complaints, complaint resolutions, and appeals procedures filed by individuals who apply for or receive services funded under an approved Area Plan on Aging.
	1921.2	Area Agency on Aging shall ensure that the policies and procedures include the following components:

	1921.2	**A**	Information about the individual's legal rights regarding making a complaint(s) arising from the delivery of services, including, but not limited to, ineligibility determination, reduction of services, suspension or termination of services, or for the quality of services. The Area Agency on Aging or entity that such agency has contracted with, (hereafter referenced as service providers) must provide written notification of these rights and applicable procedures to individuals who apply for or receive services funded under an approved Area Plan on Aging.

		B	The opportunity to exercise appeal rights as defined by applicable laws, rules and regulations. The Area Agency on Aging or service provider must provide written notification of these rights and applicable procedures to individuals who apply for or receive services funded under an approved Area Plan on Aging.
		C	Assistance in making informed decisions regarding this process.
		D	Written notification that service provision will not be reduced, suspended or terminated prior to a hearing decision from the appropriate hearing entity, if applicable, unless termination, suspension or reduction was due to funding no longer being available or it was determined that the personal safety of workers providing services was at risk. See also Section 3127.3.
		E	Written documentation of the complaint, attempts to resolve and outcome of the complaint and/or appeal must be retained in the individual's file at the Area Agency on Aging and/or service provider.

	1920	**Client Complaint, Administrative Review, and Appeals**		
1922	**Operational Procedures for Client Complaints**			
	1922.1	An Area Agency on Aging shall establish, and monitor that service providers also adopt, written procedures for which to accept a client complaint and the process for which resolution is to be achieved. The written procedure shall be given to clients. The procedure should include the following components:		
		A		Allow for a client to attempt to resolve complaints at the level where the incident occurred, which may include an opportunity for an informal meeting to resolve the complaint.
		B		If the client's complaint is with the service provider, the client shall first file a written complaint with that service provider within 15 days. The service provider shall respond to the complaint in writing within 30 days.
		C		If the service provider takes no action to resolve the complaint within 30 days, or if the client perceives the complaint is unsatisfactorily resolved, the client shall file a complaint in writing to the Area Agency on Aging within 15 days from the issuance of the service provider's written response.
		D	**1**	Upon receipt of a client complaint, the Area Agency on Aging will –objectively review and investigate the complaint, and attempt to resolve the complaint informally. If an informal resolution cannot be reached, the Area Agency on Aging shall issue its written decision within 30 days of the date the complaint was filed with the Area Agency on Aging. OR
			2	If the client's complaint is with the Area Agency on Aging, the Area Agency on Aging will attempt to resolve the complaint informally. If an informal resolution cannot be reached, the Area Agency on Aging shall issue its written decision within 30 days of the date the complaint was filed with the Area Agency on Aging.

1920	Client Complaint, Administrative Review, and Appeals		
1922	**Operational Procedures for Client Complaints**		
		E	If the Area Agency on Aging takes no action to resolve the complaint within 30 days, or if the client perceives the complaint is unsatisfactorily resolved, the client shall file a request for Administrative Review from the DES, Division of Aging and Adult Services Assistant Director within 30 days from the issuance of the Area Agency on Aging's written response, in accordance with section 1923.1.

1920	Client Complaint, Administrative Review, and Appeals		
1922	**Operational Procedures for Client Complaints (continued)**		
	1922.1	F	Written documentation of the complaint, attempts to resolve the complaint and outcome must be documented in the individual's file at the Area Agency on Aging and/or service provider.

1920	Client Complaint, Administrative Review, and Appeals			
1923	**Operational Procedures for an Administrative Review resulting from a Client Complaint or Service Provider**			
	1923.1	If no resolution to the complaint at the Area Agency on Aging level is possible as identified in section 1922, the individual or service provider has the right to file a request for an **Administrative Review** with the Department of Economic Security, Division of Aging and Adult Services Assistant Director, or designee. An Area Agency on Aging may also request an Administrative Review if the Division disapproves an Area Plan or plan amendment or to withdraw the Area Agency on Aging's designation.		
		A	The request for an administrative review must be submitted in writing to the Department of Economic Security within **30** days after the mailing date of the Area Agency on Aging's decision. The request shall be directed to: Assistant Director Division of Aging and Adult Services Department of Economic Security P.O. Box 6123 Phoenix, Arizona 85005	
		B	1	If the Administrative Review is requested by the individual, the Division's Assistant Director or designee shall schedule an administrative review conference to meet with the individual and the service provider and/or Area Agency on Aging. At the administrative review conference, the parties involved may review pertinent evidence on which the action was based. OR

1920	Client Complaint, Administrative Review, and Appeals		
1922	**Operational Procedures for an Administrative Review resulting from a Client Complaint or Service Provider**		
		2	If the Administrative Review is requested by the service provider, the Division's Assistant Director or designee shall schedule an administrative review conference to meet with the services provider and the Area Agency on Aging. At the administrative review conference, the parties involved may review pertinent evidence on which the action was based. OR
		3	If the Administrative Review is requested by the Area Agency on Aging, the Division's Assistant Director or designee shall schedule an administrative review conference to meet with the Area Agency on Aging. At the administrative review conference, the Area Agency on Aging may review pertinent evidence on which the action was based.
	C		The Division's Assistant Director or designee shall issue a decision in writing within 60 days of the filing of the request for administrative review.
	D		The written determination and related documentation will be maintained by the Department of Economic Security, Division of Aging and Adult Services in accordance with its record retention policy.

1920	Client Complaint, Administrative Review, and Appeals
1924	**Operational Procedures for Appeals and Hearings**
1924.1	The individual has the right to appeal the Department of Economic Security, Division of Aging and Adult Services decision and request a **hearing in accordance with Arizona Administrative Code R6-5-2404.** The request shall be directed to: Assistant Director Division of Aging and Adult Services Department of Economic Security P.O. Box 6123 Phoenix, Arizona 85005

1930	Fingerprint Requirement	
1930	**Operational Procedures for Fingerprinting**	
1930.1	The Area Agency on Aging must ensure that service providers comply with the following:	
	A	A fingerprint based criminal background check shall be completed at time of hire, or as a result of reassignment after hire, on employees and volunteers and SCSEP participants who have direct contact with vulnerable individuals including those who are mentally disabled, frail, or have a chronic disease that puts them at risk for abuse (see A.R.S. § 46-141). See also the Arizona Department of Economic Security Special Terms and Conditions - Professional Services / Optional Auto / Children-Vulnerable Adult / Bonding Area Agency on Aging, section 5.

1100 GRIEVANCE PROCESS

This section addresses the grievance process and clients who choose to escalate their grievance to the state level. Each Service Provider must have a grievance procedure in place as defined in their respective contract. The Service Provider should include the DES grievance process contained in this section when providing their internal process to the applicant. Service Provider's internal grievance process should allow for a client to attempt to resolve complaints at the local level in an informal manner. First the applicant/recipient must follow the Service Provider's process prior to appealing with DES. Should an individual decide to appeal the local Service Provider's decision they may appeal through the DES grievance process.

A grievance procedure is a process through which any individual may have a decision reviewed by a third party in accordance with *Arizona Administrative Code R-5-2404*. An opportunity for a grievance hearing shall be granted to any applicant who requests a hearing because their application for LIHEAP assistance was denied, terminated or incurred a benefit reduction. There are four steps to the procedure;

1. An opportunity to file a request for a fair hearing regarding any adverse action shall be granted by the Service Provider to any applicant/recipient who requests a hearing because his or her benefit assistance is denied, delayed, discontinued, suspended or terminated. The applicant/recipient must within ten (10) working days provide in writing a statement of the grounds for the hearing. The request must be submitted to the Service Provider within ten (10) working days after the mailing date on the decision letter. The Service Provider receiving the grievance will make all efforts to resolve the issues within ten (10) working days of the request.

2. In the event the applicant/recipient wishes to appeal the decision of the Service Provider, the applicant/recipient may within ten (10) working days of receiving the Service Provider's decision letter appeal in writing to the DES/DAAS Assistant Director. The Assistant Director will assign the appropriate personnel to conduct the hearing. A decision will be provided within ten (10) working days of the appeal letter. The request should be mailed to:

   DEPARTMENT OF ECONOMIC SECURITY – Site Code 950A
   Division of Aging and Adult Services
   COMMUNITY SERVICES PROGRAM ADMINISTRATOR
   P.O. Box 6123
   Phoenix, AZ 85005-6123

3. In the event the applicant/recipient wishes to appeal DES/DAAS's decision the applicant/recipient may within ten working days of receiving the DES/DAAS's decision letter, request in writing, a fair hearing from the Arizona Court of Appeals. The Arizona Court of Appeals will be responsible for conducting the hearing and providing a decision within sixty (60) days of the receiving the request.

4. In the event the applicant/recipient wishes to appeal the decision of the Arizona Court of Appeals, the applicant/recipient may within ten (10) working days of receiving the Arizona Court of Appeals decision letter, request in writing, a fair hearing from the Department of Health and Human Services, Office of Community Services in Washington D.C. The Department of Health and Human Services, Office of Community Services in Washington D.C. will be responsible for providing a decision within sixty (60) days of the request.

1100.01 Service Provider's Additional Responsibilities to the Applicant/Recipient

The Service Provider will provide the applicant/recipient with a copy of their application. The Service Provider is also responsible for the following hearing related activities:

A. Upon written or verbal request, provide the applicant/recipient with materials needed to prepare for the review, including copies of pertinent documents in their case file.

B. The grievance hearing notification shall be given to the applicant/recipient at least twenty (20) calendar days prior to the date set for the hearing and include: date, time, address and a statement of the issues involved.

C. Determine whether a bilingual interpreter or other alternative form of communication is needed.

D. The Service Provider shall render a written decision to the appellant no later than twenty (20) calendar days from the date of the hearing.

E. The applicant/recipient must be advised of their right to appeal the decision and process by which to do so.

Note:	All documents given to the public must include a reasonable accommodation statement.

1100.02 Service Provider's Responsibilities to the Division of Aging and Adult Services

The Service Provider is responsible for providing the following information to DES/DAAS within ten (10) working days from the request:

A. A grievance packet that contains the appellant's application, verification documents which justify the action the Service Provider has taken, case notes, printouts and all other information relevant to the issue, and a copy of the denial notice given to applicant.

B. A brief summary of the circumstances supporting the Service Provider's determination which is at issue including copies of all pertinent documentation.

C. The date the hearing was conducted.

1100.03 Service Provider's Appeal Rights

Service Providers have the right to appeal a decision made by DES/DAAS. A written request must be submitted to DES/DAAS within ten (10) working days of the post-mark date of the DES/DAAS decision letter. The request must be signed, dated and contain the reason for requesting the hearing. The request must be submitted to:

DEPARTMENT OF ECONOMIC SECURITY – Site Code 950A
Division of Aging and Adult Services
COMMUNITY SERVICES PROGRAM ADMINISTRATOR
P.O. Box 6123

Phoenix, AZ 85005-6123

1100.04 Division of Aging and Adult Services Responsibilities

DES/DAAS is responsible for the following hearing related activities:

A. Upon written or verbal request, provide the applicant/recipient with contact information for available legal service.

B. Upon written or verbal request, provide the applicant/recipient with materials needed to prepare for the hearing, including copies of pertinent documents in their case file.

C. The hearing notice shall be given to the applicant/recipient at least twenty (20) calendar days prior to the date set for the hearing and include: date, time, address and a statement of the issues involved.

D. Determine whether a bilingual interpreter or other alternative form of communication is needed.

E. DES/DAAS shall render a written decision to the applicant/recipient and Service Provider no later than twenty (20) calendar days from the date of the hearing.

TITLE 6. ECONOMIC SECURITY

CHAPTER 8. DEPARTMENT OF ECONOMIC SECURITY AGING AND ADULT ADMINISTRATION

(Authority: A.R.S. § 41-1954 et seq.)

ARTICLE 1. GRIEVANCES AND HEARINGS

Article 1, consisting of Sections R6-8-101 through R6-8-117, adopted effective August 9, 1993 (Supp. 93-3).

Article 1, consisting of Sections R6-8-101 through R6-8-111, repealed effective August 9, 1993 (Supp. 93-3).

Article 1, consisting of Sections R6-8-101 through R6-8-111, adopted effective May 12, 1981 (Supp. 81-3).

Section
R6-8-101. Definitions
R6-8-102. Client Complaint Resolution Procedures
R6-8-103. Right to Review
R6-8-104. Administrative Review Procedures
R6-8-105. Right to Appeal
R6-8-106. Filing an Appeal
R6-8-107. Service on Parties
R6-8-108. Time
R6-8-109. Scheduling and Notice of Hearing
R6-8-110. Change of Hearing Officer
R6-8-111. Failure of a Party to Appear
R6-8-112. Subpoena of Witnesses and Documents
R6-8-113. Conduct of Hearing
R6-8-114. Hearing Decision
R6-8-115. Termination of Appeal
R6-8-116. Appeal to the Commissioner on Aging
R 6-8-117. Review by the Appeals Board

ARTICLE 2. ADULT PROTECTIVE SERVICES

Article 2, consisting of Sections R6-8-201 through R6-8-210, adopted effective August 21, 1996 (Supp. 96-3).

Article 2, consisting of Sections R6-8-201 through R6-8-224, repealed effective August 21, 1996 (Supp. 96-3).

Article 2, consisting of Sections R6-8-201 through R6-8-224, recodified from A.A.C. R6-5-5601 through R6-5-5624 effective February 13, 1996 (Supp. 96-1).

Section
R6-8-201. Definitions
R6-8-202. Reporting Requirements for Adult Protective Services Cases
R6-8-203. Eligibility for Services
R6-8-204. Jurisdiction
R6-8-205. Classification
R6-8-206. Investigation
R6-8-207. Case Planning
R6-8-208. Refusal of Services by the Adult or Guardian
R6-8-209. Case Closure
R6-8-210. Confidentiality
R6-8-211. Repealed
R6-8-212. Repealed
R6-8-213. Repealed
R6-8-214. Repealed
R6-8-215. Repealed
R6-8-216. Repealed
R6-8-217. Repealed
R6-8-218. Repealed
R6-8-219. Repealed
R6-8-220. Repealed
R6-8-221. Repealed
R6-8-222. Repealed
R6-8-223. Repealed
R6-8-224. Repealed

ARTICLE 1. GRIEVANCES AND HEARINGS

R6-8-101. Definitions

A. "Aging and Adult Administration" means the Aging and Adult Administration of the Division of Aging and Community Services, Department of Economic Security.

B. "Area agency" means an organization designated by the Department to develop and administer the area plan for a system of services to older persons.

C. "Area plan" means a plan for a comprehensive and coordinated system of services for older persons governing activities in a planning and service area.

D. "Client" means any person who applies for or receives services from the Department or from a service provider under the Older Americans Act, 42 U.S.C. 3001 et seq. or the Arizona Older Americans Act - nonmedical Home and Community-Based Care Services, A.R.S. § 46-191 et seq.

E. "Department" means the Department of Economic Security.

F. "Grievant" means an organization listed in R6-8-103 which has filed a request for review with the Department.

G. "Nutrition project" means the recipient of a subgrant or contract to provide nutrition services, other than the Area Agency.

H. "Party" means any client or grievant appealing an action under R6-8-105 or the Department.

I. "Program Administrator" means the Administrator of the Aging and Adult Administration.

J. "Service provider" means a person or organization that is awarded a subgrant or contract from an area agency to provide services under the area plan.

Historical Note

Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-102. Client Complaint Resolution Procedures

A. Each area agency shall have a written complaint resolution procedure which shall be made available to all clients.

B. The complaint resolution procedure shall provide for an informal meeting to adjust the dispute and shall inform the client of the right to appeal if not satisfied with the area agency's decision.

C. The area agency shall issue its decision within 30 days of the date the complaint is filed.

Historical Note

Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-103. Right to Review

An administrative review shall be available to:

1. Any area agency when the Department proposes to disapprove an area plan or plan amendment submitted by the area agency, or withdraw the area agency's designation;
2. Any applicant for designation as a planning and service area whose application is denied;
3. Any nutrition project for which the area agency proposes to cancel funding;

4. Any service provider whose application to provide services under an area plan is denied or whose subgrant or contract is terminated or not renewed.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-104. Administrative Review Procedures

A. A request for administrative review must be filed in writing within 30 days of receipt of the notice of an adverse action. The request shall be signed by the grievant or an authorized representative of the grievant and directed to:

The Program Administrator
Aging and Adult Administration
Department of Economic Security
P.O. Box 6123
Phoenix, Arizona 85005

B. The Program Administrator or the Administrator's designee shall schedule an administrative review conference to meet with the grievant or a representative of the grievant. At the administrative review conference, the grievant or the grievant's representative may review pertinent evidence on which the action was based.

C. The Program Administrator shall issue a final decision within 60 days of the filing of the request for administrative review.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-105. Right to Appeal

A. A client who is dissatisfied with the final decision issued by the area agency pursuant to R6-8-102 of this Article has the right to appeal that decision.

B. A grievant who is dissatisfied with the final decision issued by the Program Administrator pursuant to R6-8-103 of this Article has the right to appeal that decision.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-106. Filing an Appeal

A. Any client or grievant filing an appeal under these rules shall file a written request for hearing with the Program Administrator within 15 days after the mailing date of the area agency or Program Administrator's decision.

B. A document shall be considered received by and filed with the Department:

1. If transmitted via the United States Postal Service, on the date it is mailed. The mailing date shall be:
   a. As shown by the postmark; or
   b. As shown by the postage meter mark of the envelope in which it is received if there is no postmark; or
   c. The date entered on the document as the date of its completion, if there is no postmark, or no postage meter mark, or if the mark is illegible.
2. On the date it is received by the Department, if transmitted by any means other than the United States Postal Service.
3. The submission of document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the Department that the delay in submission was due to Department error or misinformation, or to delay by the United States Postal Service.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-107. Service on Parties

Any document mailed by the Department shall be considered as having been served on the addressee on the date it is mailed to the addressee's last known address. The date mailed shall be presumed to be the date of the document, unless otherwise indicated by the facts.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-108. Time

Any reference within this Article to "days" shall mean calendar days unless otherwise specified. In computing any period of time, the date of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be counted, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-109. Scheduling and Notice of Hearing

A. Hearings shall be held at those regularly established hearing locations most convenient to the parties or, at the discretion of the hearing officer, by telephone. The parties shall be given no less than 20 days' notice of hearing, except that the parties may waive the notice period or request a delay.

B. The notice of hearing shall inform the parties of the date, time, and place of hearing, the name of the hearing officer, the issues involved, and the right to:

1. Present the case in person or by telephone.
2. Copy any documents to be used by the Department at the hearing at a reasonable time before the hearing.
3. Request a change of hearing officer.

C. If a party contacts the Office of Appeals promptly after receiving the notice of hearing and requests a postponement for good cause, the hearing officer shall grant a postponement for a reasonable period. Good cause exists when the circumstances causing the request are beyond the reasonable control of the requesting party and failure to grant the postponement would result in undue hardship to the requesting party.

D. All scheduling is the responsibility of the Office of Appeals.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-110. Change of Hearing Officer

Not less than five days before the date set for the hearing, any party may file a written request for change of hearing officer and the matter shall immediately be transferred to another hearing officer. A hearing officer may be challenged for cause at any time before a decision becomes final. Except for good cause, not more than one change of hearing officer shall be granted to any one party.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-111. Failure of a Party to Appear

A. If there is no appearance on behalf of a party at a scheduled hearing, the hearing officer may adjourn the hearing to a later date or may make the decision on the record and on such evidence as may be presented at the scheduled hearing.

B. If, within 15 days of the scheduled hearing, a party files a written request to reopen the proceedings and establishes good cause for failure to appear at the scheduled hearing, the hearing shall be rescheduled. Notice shall be given of the time, place, and the purpose of any continued, reopened, or rescheduled hearing to all parties. Good cause shall be established upon proof that both the failure to appear and failure to timely notify the hearing officer were beyond the reasonable control of the nonappearing party.

Historical Note
Adopted effective May 12, 1981 (Supp. 81-3). Section repealed, new Section adopted effective August 9, 1993 (Supp. 93-3).

R6-8-112. Subpoena of Witnesses and Documents

The hearing officer may subpoena any witnesses or documents requested by any party or upon the hearing officer's own motion.

1. The request shall be in writing and shall state the name and address of the witness and the nature of the expected testimony. The nature of the witness' testimony must be relevant to the issues of the hearing; otherwise the hearing officer may deny the request.
2. A request for subpoena of documents shall describe them in detail and provide the name and address of the custodian.
3. The request for the issuance of a subpoena shall be filed a minimum of five working days before the hearing.
4. The Department shall prepare and serve all subpoenas. Service of the subpoena shall be accomplished by certified mail, return receipt requested.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R6-8-113. Conduct of Hearing

A. Hearings shall be conducted in an orderly and dignified manner. All hearings shall be open to the public, but the hearing officer conducting a hearing may close the hearing to other than parties to the extent necessary to protect the interests and rights of the parties.

B. Hearings shall be opened, conducted, and closed by the hearing officer who shall rule on the admissibility of evidence and shall direct the order of proof. The hearing officer shall have the power to administer oaths and affirmations, take depositions, certify official acts, and issue subpoenas to compel the attendance of witnesses and the production of any documents deemed necessary as evidence in connection with a hearing.

C. Evidence not related to the issue shall not be allowed to become a part of the record.

D. The hearing officer may, on the hearing officer's own motion or at the request of a party, exclude witnesses from the hearing room.

E. The parties may present evidence, cross-examine witnesses, and present arguments.

F. The parties to an appeal, with the consent of the hearing officer, may stipulate to facts involved in writing or on the record.

G. At the conclusion of the hearing, the parties shall be granted a reasonable opportunity to present argument on all issues of fact and law to be decided. The hearing officer shall afford the parties an opportunity to present oral argument, or to file briefs, or both.

H. A full and complete record shall be kept of all proceedings in connection with an appeal. The record shall be open for inspection by the parties. A transcript of the proceedings need not be made unless it is required for further proceedings,

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R6-8-114. Hearing Decision

A. A hearing decision shall be rendered exclusively on the evidence and testimony produced at the hearing, appropriate state and federal law, and Department rules governing the issue in dispute.

B. The decision shall set forth the pertinent facts involved, the conclusions drawn from such facts, the sections of applicable law or rule, the decision, and the reasons therefor. A copy of the decision, together with an explanation of the appeal rights, shall be delivered or mailed to each party or designated representative not more than 60 days from the date of filing the request for hearing unless the delay was caused by the appellant, in which case the time limit for delivery is extended by the number of days attributable to the appellant.

C. All decisions in favor of the appellant apply retroactively to the date of the action being appealed or to the date the hearing officer specifically finds appropriate.

D. The decision of the hearing officer shall become the final decision of the Department 15 days after it is issued unless a written petition for review has been filed.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R6-8-115. Termination of Appeal

An appeal may be terminated as follows:

1. By voluntary withdrawal if the appellant submits a signed letter or on the record at any time before the decision is issued.
2. By default when a party fails to appear at a scheduled hearing and fails to request a rescheduled hearing within 15 days. An appeal will not be considered abandoned if the party provides notification up to the time of the hearing that he is unable, due to good cause, to appear and that he still wishes a hearing, or that the matter be considered on the record.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R6-8-116. Appeal to the Commissioner on Aging

A. An appellant which has been denied designation as a planning and service area may appeal to the Commissioner on Aging, Department of Health and Human Services, within 30 days after the hearing officer's decision is mailed or otherwise delivered.

B. The appeal shall be in writing, signed, and dated. It shall set forth the grounds for the request and may be filed personally or by mail to the Administrator, Aging and Adult Administration.

Historical Note
Adopted effective August 9, 1993 (Supp. 93-3).

R6-8-117. Review by the Appeals Board

A. In all cases not covered by R6-8-116 of this Article, a party may petition for review of an adverse hearing decision within 15 days after the decision is mailed or otherwise delivered to the appellant. The petition for review shall be in writing,

signed, and dated. It shall state the grounds for the request and may be filed personally or by mail to the Aging and Adult Administration or the Office of Appeals.

B. The Appeals Board may remove to itself any matter before a hearing officer before the issuance of a decision or, if a decision has been issued, before the decision has become final. Upon removal, the Appeals Board shall notify the parties of the removal.

C. In any case of removal or review, the Appeals Board shall notify the Office of Appeals that it has accepted jurisdiction, and the Office of Appeals shall prepare a complete record of the case, including a transcript, which shall be provided to the parties upon request.

D. A copy of the Appeals Board decision, together with a statement specifying the rights to further review, shall be distributed to each party.

Historical Note

Adopted effective August 9, 1993 (Supp. 93-3).

ARTICLE 2. ADULT PROTECTIVE SERVICES

R6-8-201. Definitions

In addition to the definitions in A.R.S. § 46-451, the following definitions apply in this Article unless the context requires otherwise.

1. "Adult" means a person 18 years of age or older.
2. "Adult Protective Services" or "APS" means a program within the Department of Economic Security which provides protective services.
3. "Conservator" means a person who has been appointed by a court to manage the affairs of another, as prescribed in A.R.S. § 14-5401 et seq.
4. *"Danger to self" means:*
   a. Behavior which, as a result of a mental disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out; {or}
   b. Behavior which, as a result of a mental disorder, will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior which establishes only the condition of gravely disabled. A.R.S. § 36-501(5).
5. "Department" means the Department of Economic Security.
6. *"Gravely disabled" means "a condition, evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm, or serious illness because he is unable to provide for his basic physical needs."* A.R.S. § 36-501.
7. "Guardian" means a person who has been appointed by a court to manage the affairs of another, as prescribed in A.R.S. § 14-5301 et seq.
8. "Information and referral" means the provision of information or referral to help a person who contacts or is reported to the Department, but is not alleged to be abused, neglected, or exploited, to locate and obtain help with a problem.
9. "Intake" means a duty performed by APS staff in receiving reports or providing information and referral.
10. "Jurisdiction" means the state of Arizona, exclusive of Native American Reservation land.
11. "Life-threatening situation" means a situation or circumstance that is likely to result in death if not corrected by medical or law enforcement intervention.
12. *"Mental disorder" means "a substantial disorder of a person's emotional processes, thought, cognition, or memory. Mental disorder is distinguished from:*
    a. Conditions which are primarily those of drug abuse, alcoholism, or mental retardation, unless, in addition to 1 or more of these conditions, the person has a mental disorder;
    b. The declining mental abilities that directly accompany impending death; and
    c. Character and personality disorders characterized by lifelong and deeply ingrained anti-social behavior patterns, including sexual behaviors which are abnormal and prohibited by statute unless the behavior results from a mental disorder". A.R.S. § 36-501.
13. "Personally identifiable information" means any information that can indicate a person's identity including:
    a. Name;
    b. Address;
    c. Telephone number;
    d. Fax number;
    e. Photograph;
    f. Fingerprints;
    g. Physical description;
    h. Place, address, or telephone number of employment;
    i. Social security number;
    j. Tribal affiliation;
    k. Tribal identification number;
    l. Driver's license number;
    m. Birthdate;
    n. Medical information, history, and diagnosis; or
    o. Any other information that would reasonably lead to the identification of a person.
14. *"Prepetition screening" means the "review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application, and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services".* A.R.S. § 36-501(30).
15. *"Protected person" means "a minor or any other person for whom a conservator has been appointed or any other protective order has been made".* A.R.S. § 14-5101(4).
16. *"Protective services" means "a program of identifiable and specialized social services that may offer social services appropriate to resolve problems of abuse, exploitation or neglect of an incapacitated or vulnerable adult".* A.R.S. § 46-451(A)(8).
17. "Record" means a collection of documents, including electronic documents, related to casework about a person reported to APS, or receiving APS services.
18. "Report" means a communication which alleges abuse, neglect, or exploitation of an incapacitated or vulnerable adult, or information regarding an adult who may be in need of protective services.
19. "Special visitation warrant" means an order of the Superior court that is issued as prescribed in A.R.S. § 14-5310.01 and which permits an APS worker, accompanied by a peace officer, to visit the residence of an adult

believed to be incapacitated and abused, neglected, or exploited.

20. "Business day" means 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding Arizona state holidays.

Historical Note
R6-8-201 recodified from A.A.C. R6-5-5601 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-201 repealed, new Section R6-8-201 adopted effective August 21, 1996 (Supp. 96-3). Amended by final rulemaking at 18 A.A.R. 2716, effective December 2, 2012 (Supp. 12-4).

R6-8-202. Reporting Requirements for Adult Protective Service Cases
Upon receipt of a report, as prescribed in A.R.S. § 46-454, APS shall ask the reporting source to provide:

1. All information as prescribed in A.R.S. § 46-454(C); and,
2. As much information regarding the allegedly incapacitated, or vulnerable adult as is available to the source including:
   a. The names and addresses of those involved and their roles;
   b. The length of time the situation has been ongoing;
   c. The client's functional level;
   d. Whether other agencies are providing assistance and, if so, what type of assistance; and,
   e. Any other information that may assist the APS worker in the investigation.

Historical Note
R6-8-202 recodified from A.A.C. R6-5-5602 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-202 repealed, new Section R6-8-202 adopted effective August 21, 1996 (Supp. 96-3).

R6-8-203. Eligibility for Services
To be eligible for APS services, a person shall be:

1. Age 18 years or older;
2. Incapacitated or vulnerable;
3. The victim or alleged victim of abuse, neglect, or exploitation; and,
4. Within the jurisdiction.

Historical Note
R6-8-203 recodified from A.A.C. R6-5-5603 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-203 repealed, new Section R6-8-203 adopted effective August 21, 1996 (Supp. 96-3).

R6-8-204. Jurisdiction

A. An APS worker shall not investigate reports of events that occurred in another state or foreign country.

B. An APS worker shall investigate reports that occurred on an Indian reservation, upon written invitation by the tribal council.

Historical Note
R6-8-204 recodified from A.A.C. R6-5-5604 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-204 repealed, new Section R6-8-204 adopted effective August 21, 1996 (Supp. 96-3). Amended by final rulemaking at 18 A.A.R. 2716, effective December 2, 2012 (Supp. 12-4).

R6-8-205. Classification
At intake, an APS worker shall classify the incoming communication into one of the following two categories:

1. Information and referral, or
2. Report accepted for evaluation and investigation.

Historical Note
R6-8-205 recodified from A.A.C. R6-5-5605 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-205 repealed, new Section R6-8-205 adopted effective August 21, 1996 (Supp. 96-3). Amended by final rulemaking at 18 A.A.R. 2716, effective December 2, 2012 (Supp. 12-4).

R6-8-206. Investigation
Reports Accepted for Evaluation and Investigation:

1. In alleged life-threatening situations, the APS worker shall refer the reporting source or initiate contact with:
   a. Local law enforcement authorities,
   b. Paramedics, or
   c. An emergency medical team.
2. When an APS worker investigates a situation that may present a danger to the APS worker or client, the APS worker may ask law enforcement authorities to participate in the investigation either at the time of the report or upon arrival at the scene.
3. An APS worker shall visit a person who may be in need of adult protective services within the following established time-frames:
   a. Priority 1. The APS worker shall initiate an assessment within one business day following a report of a qualifying problem with an imminent and substantial risk of life-threatening harm.
   b. Priority 2. The APS worker shall initiate an assessment within two business days following a report of a qualifying problem with aggravating circumstances.
   c. Priority 3. The APS worker shall initiate assessment within five business days following a report of a qualifying problem with mitigating or no aggravating circumstances.
4. The APS worker shall investigate, determine, and document in the record whether:
   a. The allegations are proposed for substantiation,
   b. The client needs services,
   c. The client will accept services,
   d. The client appears able to provide informed consent for the provision of services,
   e. The Department needs to request an outside mental health assessment, or
   f. The Department needs to file for a special visitation warrant.
5. To make the assessment described in subsection (A)(4), the APS worker shall consider all relevant circumstances regarding the client, which may include the following:
   a. The client's appearance,
   b. Identifying information,
   c. Financial information,
   d. Existing protective arrangements,
   e. Physical status including any disabilities,
   f. Medications,
   g. Medical history,
   h. Mental status,
   i. Functional status,
   j. Behavioral status,
   k. Social environment,
   l. Physical environment,
   m. Nutrition,
   n. Services provided by other resources,
   o. The client's perception of the situation, and
   p. The perception of the client's situation by:
      i. Family,
      ii. Neighbors,

iii. Caregivers,
iv. Friends, or
v. Other concerned parties.

Historical Note
R6-8-206 recodified from A.A.C. R6-5-5606 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-206 repealed, new Section R6-8-206 adopted effective August 21, 1996 (Supp. 96-3). Amended by final rulemaking at 18 A.A.R. 2716, effective December 2, 2012 (Supp. 12-4).

R6-8-207. Case Planning

A. The APS worker shall maintain a case plan for clients in need of protective services.
1. The case plan shall contain:
   a. Specific goals and objectives,
   b. Outline of casework activities for achieving objectives, and
   c. Time frames for achieving objectives.

B. An APS worker shall:
1. Involve the client in identifying and understanding the client's needs and planning of services to address those needs, unless the client's mental or physical condition prevents the client from participating in planning;
2. Locate persons who can help the client achieve planned goals;
3. Regularly assess the client's progress towards the goals;
4. Revise goals to meet the changing needs of the client; and,
5. Coordinate with other agencies to address the client's needs.

Historical Note
R6-8-207 recodified from A.A.C. R6-5-5607 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-207 repealed, new Section R6-8-207 adopted effective August 21, 1996 (Supp. 96-3).

R6-8-208. Refusal of Services by the Adult or Guardian

A. An adult may refuse adult protective services.

B. If an APS worker believes that a client in need of services is a danger to self or gravely disabled due to a mental disorder, as prescribed in A.R.S. § 36-501 or in need of a guardianship or conservatorship, the APS worker may obtain further assessment of the client's physical or mental health in order to take action to protect the client.
1. The action may include:
   a. Seeking a special visitation warrant if the APS worker is denied access to a client,
   b. Petitioning for appointment of a conservator or guardian, or
   c. Applying for prepetition screening.

C. A guardian may refuse services on behalf of a protected person.

D. If an APS worker finds that a guardian is not acting in the best interest of a protected person, the APS worker may petition the court to review the guardianship. The petition shall include the specific reasons that the APS worker believes that the guardian is not acting in the best interest of the ward.

Historical Note
R6-8-208 recodified from A.A.C. R6-5-5608 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-208 repealed, new Section R6-8-208 adopted effective August 21, 1996 (Supp. 96-3).

R6-8-209. Case Closure

APS may close a case when:
1. Allegations of abuse, neglect, or exploitation are not substantiated;
2. The abuse, neglect, or exploitation is resolved by the provision of services or other methods;
3. The client's capacity is not in question, and the client is refusing APS involvement or is not accepting viable remedies for prevention of risk;
4. The client is admitted to care in a state institution or other care facility;
5. The client has moved outside the jurisdiction;
6. The client dies;
7. Contact with the client is lost and 3 attempts to reestablish contact have failed; or,
8. Guardianship or conservatorship is obtained.

Historical Note
R6-8-209 recodified from A.A.C. R6-5-5609 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-209 repealed, new Section R6-8-209 adopted effective August 21, 1996 (Supp. 96-3).

R6-8-210. Confidentiality

A. All personally identifiable information is confidential as prescribed in A.R.S. § 41-1959. A person who is entitled to obtain information pursuant to A.R.S. § 41-1959(C) and who wishes to obtain information shall comply with the requirements of this Section.

B. The person shall send a written request to the Custodian of Records at the Department of Economic Security, Division of Aging and Adult Services, Adult Protective Services, Central Office, 1789 W. Jefferson, Site code 950A, Phoenix, Arizona 85007. The request shall include the following information:
1. The name, address, and telephone number of the person, organization, or entity requesting information;
2. If the request is on behalf of an organization or entity, the name and title of the person signing the request;
3. The purpose for which the information is sought;
4. The Section of A.R.S. § 41-1959(C) authorizing the person to obtain the information;
5. The name of the client who is the subject of the APS report, with as much of the following information as the requester can provide:
   a. Other possible spellings, names, or aliases of the client;
   b. The approximate date of the APS report; and,
   c. Any other data that the requester believes will be likely to assist the Department in identifying the information requested.

C. Upon receipt of a request for information, the Department shall determine if the request is complete. If the request is not complete, the Department shall contact the requester for the missing information.

D. The receipt date is the day that the receiving office designated on the request actually receives the complete request, as prescribed in subsection (B).

E. The Department shall respond to the requester within 15 business days.

F. The person releasing the information shall document in the case record:
1. The name of the person to whom the information was released,
2. The date and method of release, and
3. A description of the information released.

Historical Note
R6-8-210 recodified from A.A.C. R6-5-5610 effective February 13, 1996 (Supp. 96-1). Former Section R6-8-210 repealed, new Section R6-8-210 adopted effective

August 21, 1996 (Supp. 96-3). Amended by final rulemaking at 18 A.A.R. 2716, effective December 2, 2012 (Supp. 12-4).

R6-8-211. Repealed

Historical Note
R6-8-211 recodified from A.A.C. R6-5-5611 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-212. Repealed

Historical Note
R6-8-212 recodified from A.A.C. R6-5-5612 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-213. Repealed

Historical Note
R6-8-213 recodified from A.A.C. R6-5-5613 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-214. Repealed

Historical Note
R6-8-214 recodified from A.A.C. R6-5-5614 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-215. Repealed

Historical Note
R6-8-215 recodified from A.A.C. R6-5-5615 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-216. Repealed

Historical Note
R6-8-216 recodified from A.A.C. R6-5-5616 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-217. Repealed

Historical Note
R6-8-217 recodified from A.A.C. R6-5-5617 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-218. Repealed

Historical Note
Adopted effective July 6, 1976 (Supp. 76-4). Former Section R6-5-5617 renumbered as Section R6-5-5618 effective January 13, 1977 (Supp. 77-1). R6-8-218 recodified from A.A.C. R6-5-5618 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-219. Repealed

Historical Note
R6-8-219 recodified from A.A.C. R6-5-5619 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-220. Repealed

Historical Note
R6-8-220 recodified from A.A.C. R6-5-5620 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-221. Repealed

Historical Note
R6-8-221 recodified from A.A.C. R6-5-5621 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-222. Repealed

Historical Note
R6-8-222 recodified from A.A.C. R6-5-5622 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-223. Repealed

Historical Note
R6-8-223 recodified from A.A.C. R6-5-5623 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

R6-8-224. Repealed

Historical Note
R6-8-224 recodified from A.A.C. R6-5-5624 effective February 13, 1996 (Supp. 96-1). Repealed effective August 21, 1996 (Supp. 96-3).

41-1003. Required rule making

Each agency shall make rules of practice setting forth the nature and requirements of all formal procedures available to the public.

41-1954. Powers and duties

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

1. Administer the following services:

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

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

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

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

(e) Administrative services, including the coordination of program evaluation and research, interagency program coordination and in-service training, planning, grants, development and management, information, legislative liaison, budget, licensing and other related functions.
(f) Manpower planning, including a state manpower planning council for the purposes of the federal-state-local cooperative manpower planning system and other related functions in furtherance of programs under the comprehensive employment and training act of 1973, as amended, and other related federal acts and titles.
(g) Economic opportunity services, including the furtherance of programs prescribed under the economic opportunity act of 1967, as amended, and other related federal acts and titles.
(h) Intellectual disability and other developmental disability programs, with emphasis on referral and purchase of services. The program shall include educational, rehabilitation, treatment and training services and other related functions in furtherance of programs under the developmental disabilities services and facilities construction act, Public Law 91-517, and other related federal acts and titles.
(i) Nonmedical home and community based services and functions, including department designated case management, housekeeping services, chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite sitter care, attendant care, home delivered meals and other related services and functions.
2. Provide a coordinated system of initial intake, screening, evaluation and referral of persons served by the department.
3. Adopt rules it deems necessary or desirable to further the objectives and programs of the department.
4. Formulate policies, plans and programs to effectuate the missions and purposes of the department.
5. Employ and determine the conditions of employment and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons subject to chapter 4, article 4 and, as applicable, article 5 of this title as may be necessary in the performance of its duties, contract for the services of outside advisors, consultants and aides as may be reasonably necessary and reimburse department volunteers, designated by the director, for expenses in transporting clients of the department on official business.

6. Make contracts and incur obligations within the general scope of its activities and operations subject to the availability of funds.
7. Contract with or assist other departments, agencies and institutions of the state, local and federal governments in the furtherance of its purposes, objectives and programs.
8. Be designated as the single state agency for the purposes of administering and in furtherance of each federally supported state plan.
9. Accept and disburse grants, matching funds and direct payments from public or private agencies for the conduct of programs that are consistent with the overall purposes and objectives of the department.
10. Provide information and advice on request by local, state and federal agencies and by private citizens, business enterprises and community organizations on matters within the scope of its duties subject to the departmental rules on the confidentiality of information.
11. Establish and maintain separate financial accounts as required by federal law or regulations.
12. Advise and make recommendations to the governor and the legislature on all matters concerning its objectives.
13. Have an official seal that shall be judicially noticed.
14. Annually estimate the current year's population of each county, city and town in this state, using the periodic census conducted by the United States department of commerce, or its successor agency, as the basis for such estimates and deliver such estimates to the economic estimates commission before December 15.
15. Estimate the population of any newly annexed areas of a political subdivision as of July 1 of the fiscal year in which the annexation occurs and deliver such estimates as promptly as is feasible after the annexation occurs to the economic estimates commission.
16. Establish and maintain a statewide program of services for persons who are both hearing impaired and visually impaired and coordinate appropriate services with other agencies and organizations to avoid duplication of these services and to increase efficiency. The department of economic security shall enter into agreements for the utilization of the personnel and facilities of the department of economic security, the department of health services and other appropriate agencies and organizations in providing these services.
17. Establish and charge fees for deposit in the department of economic security pre-layoff assistance services fund to employers who voluntarily participate in the services of the

department that provide job service and retraining for persons who have been or are about to be laid off from employment. The department shall charge only those fees necessary to cover the costs of administering the job service and retraining services.

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

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

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

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

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

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

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

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

These activities shall include:

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

(b) Identifying and developing strategies for resolving barriers in state agency service delivery systems that inhibit the provision and coordination of appropriate services to homeless persons and persons in danger of being homeless.
(c) Assisting in the coordination of the activities of federal, state and local governments and the private sector that prevent homelessness or provide assistance to homeless people.
(d) Assisting in obtaining and increasing funding from all appropriate sources to prevent homelessness or assist in alleviating homelessness.
(e) Serving as a clearinghouse on information regarding funding and services available to assist homeless persons and persons in danger of being homeless.
(f) Developing an annual state comprehensive homeless assistance plan to prevent and alleviate homelessness.
(g) Submitting an annual report to the governor, the president of the senate and the speaker of the house of representatives on the status of homelessness and efforts to prevent and alleviate homelessness.
20. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
21. Exchange information, including case specific information, and cooperate with the department of child safety for the administration of the department of child safety's programs.
B. If the department of economic security has responsibility for the care, custody or control of a child or is paying the cost of care for a child, it may serve as representative payee to receive and administer social security and United States department of veterans affairs benefits and other benefits payable to such child. Notwithstanding any law to the contrary, the department of economic security:
1. Shall deposit, pursuant to sections 35-146 and 35-147, such monies as it receives to be retained separate and apart from the state general fund on the books of the department of administration.

2. May use such monies to defray the cost of care and services expended by the department of economic security for the benefit, welfare and best interests of the child and invest any of the monies that the director determines are not necessary for immediate use.
3. Shall maintain separate records to account for the receipt, investment and disposition of funds received for each child.
4. On termination of the department of economic security's responsibility for the child, shall release any funds remaining to the child's credit in accordance with the requirements of the funding source or in the absence of such requirements shall release the remaining funds to:
(a) The child, if the child is at least eighteen years of age or is emancipated.
(b) The person responsible for the child if the child is a minor and not emancipated.
C. Subsection B of this section does not pertain to benefits payable to or for the benefit of a child receiving services under title 36.
D. Volunteers reimbursed for expenses pursuant to subsection A, paragraph 5 of this section are not eligible for workers' compensation under title 23, chapter 6.
E. In implementing the temporary assistance for needy families program pursuant to Public Law 104-193, the department shall provide for cash assistance to two parent families if both parents are able to work only on documented participation by both parents in work activities described in title 46, chapter 2, article 5, except that payments may be made to families who do not meet the participation requirements if:
1. It is determined on an individual case basis that they have emergency needs.
2. The family is determined to be eligible for diversion from long-term cash assistance pursuant to title 46, chapter 2, article 5.
F. The department shall provide for cash assistance under temporary assistance for needy families pursuant to Public Law 104-193 to two parent families for no longer than six months if both parents are able to work, except that additional assistance may be provided on an individual case basis to families with extraordinary circumstances. The department shall establish by rule the criteria to be used to determine eligibility for additional cash assistance.
G. The department shall adopt the following discount medical payment system for persons who the department determines are eligible and who are receiving rehabilitation services pursuant to subsection A, paragraph 1, subdivision (c) of this section:

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

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

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

(a) An admission face sheet.

(b) An itemized statement.

(c) An admission history and physical.

(d) A discharge summary or an interim summary if the claim is split.

(e) An emergency record, if admission was through the emergency room.

(f) Operative reports, if applicable.

(g) A labor and delivery room report, if applicable.

4. The department shall require that the hospital pursue other third-party payors before submitting a claim to the department. Payment received by a hospital from the department pursuant to this subsection is considered payment by the department of the department's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third party payors or in situations covered by title 33, chapter 7, article 3.

5. For inpatient hospital admissions and outpatient hospital services rendered on and after October 1, 1997, if the department receives the claim directly from the hospital, the department shall pay a hospital's rate established according to this section subject to the following:

(a) If the hospital's bill is paid within thirty days of the date the bill was received, the department shall pay ninety-nine per cent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred per cent of the rate plus a fee of one per cent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

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

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

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

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

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

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

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

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

2. Information on these persons held by financial institutions.

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

1. The obligor's financial resources.

2. The cost of further enforcement action.

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

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

41-1991. Appeals; procedures

Appeals shall be conducted in accordance with chapter 6, article 6 of this title, except as otherwise provided by law.

41-1992. Hearing officers; powers and duties

A. The director shall appoint hearing officers who shall conduct such hearings as the director may determine are necessary in accordance with law.

B. Within a reasonable time before the date set for the hearing any interested party to a hearing before the department may file an affidavit for change of hearing officer against any hearing officer of the department hearing such matters and the hearing officer shall immediately transfer the matter to another hearing officer of the department who shall preside in the matter. Reasonable time shall be established by regulation. Not more than one change of hearing officer shall be granted to any one party.

C. In every contested case, the hearing officer shall issue to all interested parties a decision on the record that includes findings of fact and conclusions of law. The decision shall become the final decision of the department within fifteen days after it is mailed or electronically transmitted to an interested party unless a written petition for review has been filed or the case has been removed to the appeals board for review and decision.

D. The appeals board established pursuant to section 23-672 is authorized to review any hearing officer's decision on timely filing of a petition for review by an interested party. On review, the appeals board may affirm, reverse, modify or set aside a hearing officer's decision or remand the case to any hearing officer for additional evidence, rehearing or modification of decision.

E. On notice to all interested parties, the appeals board may remove to itself any case pending before any hearing officer before a decision becomes final.

F. The department shall prescribe by regulation procedures for implementing this section.

41-1993. Judicial review

A. Any party aggrieved by a decision of the director is entitled to judicial review of the decision pursuant to title 12, chapter 7, article 6.

B. Any party aggrieved by a decision of the appeals board may file an application for appeal to the court of appeals with the clerk of the appeals board within thirty days after the date of mailing or electronic transmission of the decision, except as provided in subsection C of this section. On the filing of an application for appeal, the clerk of the appeals board shall transmit to the court of appeals the application for appeal, the decisions issued by the appeals board and all petitions for review and responses of the appeals board. The clerk of the appeals board shall also transmit any portions of the record before the department requested by the court of appeals. The court of appeals shall thereafter grant or deny the application for appeal. If the application is denied, the decision of the appeals board shall be deemed final, and further appeal may not be taken. If the application is granted, the rules for appeals in civil actions shall apply, commencing with the preparation and transmittal of the complete record before the department and a record index. A bond for costs on appeal or docket fee is not required. The department and all parties before the appeals board shall be given notice of the appeal and an opportunity to appear. All appeals are limited to the record before the department unless the court orders otherwise. An issue may not be raised on appeal that has not been raised in the petition for review before the

appeals board. The department shall provide the record for use by the court and by any parties who request copies. The cost of providing the record is a taxable cost if the department prevails. The court of appeals may designate one department of division one to hear all appeals under this section.

C. Any party aggrieved by a decision of the appeals board concerning tax liability, collection or enforcement may appeal to the tax court, as defined in section 12-161, within thirty days after the date of mailing or electronic transmission of the decision. The appellant need not pay any of the tax, penalty or interest upheld by the appeals board in its decision before initiating, or in order to maintain an appeal to the tax court pursuant to this section.

D. Any appeal that is taken to tax court pursuant to this section is subject to the following provisions:

1. No injunction, writ of mandamus or other legal or equitable process may issue in an action in any court in this state against an officer of this state to prevent or enjoin the collection of any tax, penalty or interest.

2. The action shall not begin more than thirty days after the date of mailing or electronic transmission of the appeals board's decision. Failure to bring the action within thirty days after the date of mailing or electronic transmission of the appeals board's decision constitutes a waiver of the protest and a waiver of all claims against this state arising from or based on the illegality of the tax, penalties and interest at issue.

3. The scope of review of an appeal to tax court pursuant to this section shall be governed by section 12-910, applying section 23-613.01 as that section reads on the date the appeal is filed to the tax court or as thereafter amended. Either party to the action may appeal to the court of appeals or supreme court as provided by law.

41-1994. Appeal from superior court

An aggrieved party may secure a review of a final judgment of the superior court made and entered under this article, unless prohibited by law. The appeal shall be taken in the manner provided by law for appeals from superior court in a civil action.

41-1995. Service of documents by electronic means

Notwithstanding section 41-1002, subsection B and section 41-1063, the hearing officer or appeals board, as an alternative to any other means of service permitted or required by any law, may serve or deliver any notice, decision or order or any other document by electronic means if the party being served consents in writing or on the record to service by electronic means. Service by electronic means is deemed complete on transmission.

46-134. Powers and duties; expenditure; limitation

The state department shall:

1. Administer all forms of public relief and assistance except those that by law are administered by other departments, agencies or boards.

2. Develop a section of rehabilitation for the visually impaired that shall include a sight conservation section, a vocational rehabilitation section in accordance with the federal vocational rehabilitation act, a vending stand section in accordance with the federal Randolph-Sheppard act and an adjustment service section that shall include rehabilitation teaching and other social services deemed necessary, and shall cooperate with similar agencies already established. The administrative officer and staff of the section for the blind and visually impaired shall be employed only in the work of that section.

3. Assist other departments, agencies and institutions of the state and federal governments, when requested, by performing services in conformity with the purposes of this title.

4. Act as agent of the federal government in furtherance of any functions of the state department.

5. Carry on research and compile statistics relating to the entire public welfare program throughout this state, including all phases of dependency and defectiveness.

6. Cooperate with the superior court in cases of delinquency and related problems.

7. Develop plans in cooperation with other public and private agencies for the prevention and treatment of conditions giving rise to public welfare and social security problems.

8. Make necessary expenditures in connection with the duties specified in paragraphs 5, 6, 7, 13 and 14 of this subsection.

9. Have the power to apply for, accept, receive and expend public and private gifts or grants of money or property on the terms and conditions as may be imposed by the donor and for any purpose provided for by this chapter.

10. Make rules, and take action necessary or desirable to carry out the provisions of this title, that are not inconsistent with this title.
11. Administer any additional welfare functions required by law.
12. If a tribal government elects to operate a cash assistance program in compliance with the requirements of the United States department of health and human services, with the review of the joint legislative budget committee, provide matching monies at a rate that is consistent with the applicable fiscal year budget and that is not more than the state matching rate for the aid to families with dependent children program as it existed on July 1, 1994.
13. Furnish a federal, state or local law enforcement officer, at the request of the officer, with the current address of any recipient if the officer furnishes the agency with the name of the recipient and notifies the agency that the recipient is a fugitive felon or a probation, parole or community supervision violator or has information that is necessary for the officer to conduct the official duties of the officer and the location or apprehension of the recipient is within these official duties.
14. In conjunction with Indian tribal governments, request a federal waiver from the United States department of agriculture that will allow tribal governments that perform eligibility determinations for temporary assistance for needy families programs to perform the food stamp eligibility determinations for persons who apply for services pursuant to section 36-2901, paragraph 6, subdivision (a). If the waiver is approved, the state shall provide the state matching monies for the administrative costs associated with the food stamp eligibility based on federal guidelines. As part of the waiver, the department shall recoup from a tribal government all federal fiscal sanctions that result from inaccurate eligibility determinations.

46-182. Section powers and duties; costs

The section, in carrying out the provisions of the older Americans act of 1965, Public Law 89-73, as amended, shall:
1. Cooperate with the federal commissioner on aging and provide information to the administration on aging, department of health, education and welfare upon request.
2. Assist the department in preparing a state plan for the administration of the state program for the aging which shall set forth the provisions contained in section 303 of the older Americans act of 1965.

3. Serve as a clearing house for information related to state problems of the aged and aging. Gather and disseminate information and conduct hearings, conferences and special studies on problems and programs concerning the aging.
4. Develop plans, conduct and arrange for research and demonstration programs in the field of aging.
5. Provide consultation to counties and subdivisions thereof with respect to local community programs for the aged and aging. Develop, coordinate, and assist other public and private organizations which serve the aging.
6. Prepare, publish and disseminate educational materials dealing with the health and welfare of aged persons. Stimulate public awareness of the problems of the aging by conducting a program of public education and encourage the governor and the legislature to develop programs to deal with such problems.
7. Stimulate more effective use of existing resources and available services for the aged and aging, including coordination of the activities of other state departments, and the collaboration with such departments, agencies or commissions, with county officials and voluntary agencies and with state and local professional associations and societies for the aged and aging.

46-191. Definitions

In this article, unless the context otherwise requires:
1. "Adult day care" or "adult day health" means services which provide adults with optimal personal care in a group setting during a portion of a twenty-four hour day. This service provides planned care and supervision, recreation and socialization, personal care, personal living skills training, congregate meals and health monitoring and may include health related services such as preventive, therapeutic and restorative health care.
2. "Attendant care" means a service which provides a trained attendant to provide assistance with homemaking, general supervision and personal care.
3. "Case management services" means the assessment and development of an individualized service plan through which the eligibility of individuals is determined, appropriate services or benefits are identified, planned, reported, monitored or terminated and follow-up is provided if and when appropriate.

4. "Home care services" means services provided to an individual who is functionally impaired and unable to perform activities of daily living. These services include case management, assessment of functional impairment and needed community services, home care, housekeeping chore services, home health aid, personal care, visiting nurse services, adult day care, adult day health, respite care, attendant care and home delivered meals.
5. "Home delivered meals service" means a nutritious meal which contains at least one-third of the recommended dietary allowance for an individual and is delivered to the individual's place of residence.
6. "Home health aid" means services which provide intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living within the individual's place of residence.
7. "Nonmedical home and community based care system" means a comprehensive, case managed system of care which is provided to a functional person with a disability in the person's home or community and which supports the role of the family and caregivers as a part of the care plan which may include personal care, housekeeper chore services, adult day care, adult day health care, respite care and home delivered meals, as well as health care services which are a necessary, but subordinate, part of the care plan.
8. "Older Arizonan" means a resident of this state who is at least sixty years of age.
9. "Person with a physical disability" means an individual who has a physical impairment that substantially limits one or more major life activities and who has a diagnosis of such impairment.
10. "Personal care" means assistance to meet essential personal physical needs.
11. "Respite sitter services" means short-term care and supervision which may be required to be available on a twenty-four hour basis.
12. "Visiting nurse services" means services which provide intermittent skilled nursing services in the individual's place of residence. Skilled nursing services may include health maintenance, continued treatment or supervision of a health condition.

46-192. Identification of services

A. The department, in conjunction with other state and local government agencies and community organizations and agencies, shall identify those services provided by state departments and agencies that are appropriate services to implement the goal of enabling older

Arizonans to maintain the most independence and freedom, avoid institutional care and live in dignity. In addition to existing services, such services may include the following:

1. General information services, including publication of available services, information and referral and outreach.
2. Transportation, including transportation necessary to guarantee access to services.
3. Nutrition, socialization and education.
4. Nonmedical home and community based care including case management, assessment of functional impairment and needed community services, home care, housekeeping chore services, home health aid, personal care, visiting nurse services, adult day care or adult day health, respite care, attendant care and home delivered meals.
5. Physical and mental health services, including inpatient and outpatient care, screening, appliances and supplies, mental health and home health care.
6. Placement services, including nursing homes, supervisory care, personal care, foster care and day care.
7. Protective advocacy and legal services.
8. Education, including senior adult education programs and training and research in the field of aging.
9. Volunteer and leadership development services.
10. Self-support services, including employment services, job development and income maintenance.

B. The department shall develop a basic plan to coordinate the services identified in this section and other appropriate services so as to avoid duplication and increase efficiency.

C. The department of health services, the department of transportation, the Arizona department of education and other appropriate state departments and agencies shall cooperate in coordinating services under the basic plan.

D. The department shall develop a comprehensive agreement by which the personnel and facilities of the department, the department of health services, the department of transportation, the Arizona department of education and other appropriate departments and agencies are utilized in carrying out this article provided that such agreement:

1. Results in more economical performance of duties of those departments and agencies.

2. Allows the department to contract for the services of consultants and agencies, subject to the availability of funding for such purpose.

E. The department may provide information and assist local agencies and organizations that provide services to older Arizonans.

F. The department may, under grant programs, utilize older Americans as staff to implement this article.

G. The integrity of senior citizen participation at all planning and program development levels shall be ensured.

H. The director shall designate an employee within the department to be responsible for the direction, planning, coordination and administration of the department's responsibilities under this article.

46-193. Respite care for care givers of the elderly program; definition

The department shall develop and implement a statewide program to provide respite care for care givers of the elderly. The department shall establish guidelines regarding the distribution of monies and respite care services. For the purposes of this section, "respite care" means short-term care and supervision services provided to an individual to relieve the care giver.

46-451. Definitions; program goals

A. In this chapter, unless the context otherwise requires:

1. "Abuse" means:

(a) Intentional infliction of physical harm.

(b) Injury caused by negligent acts or omissions.

(c) Unreasonable confinement.

(d) Sexual abuse or sexual assault.

2. "De facto conservator" means any person who takes possession of the estate of a vulnerable adult, without right or lawful authority. A de facto conservator is subject to all of the responsibilities that attach to a legally appointed conservator or trustee.

3. "De facto guardian" means any person who takes possession of the person of a vulnerable adult, without right or lawful authority. A de facto guardian is subject to all of the responsibilities that attach to a legally appointed guardian.

4. "Exploitation" means the illegal or improper use of a vulnerable adult or his resources for another's profit or advantage.

5. "Informed consent" means any of the following:

(a) A written expression by the person that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind and if the consent is witnessed by at least two individuals who do not benefit by the withdrawal of services.

(b) Consent to withdraw food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health as permitted by an order of a court of competent jurisdiction.

(c) A declaration made pursuant to title 36, chapter 32.

(d) Consent by another person under a durable power of attorney relating to health care services to withdraw food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.

6. "Neglect" means a pattern of conduct without the person's informed consent resulting in deprivation of food, water, medication, medical services, shelter, cooling, heating or other services necessary to maintain minimum physical or mental health.

7. "Protective services" means a program of identifiable and specialized social services that may offer social services appropriate to resolve problems of abuse, exploitation or neglect of a vulnerable adult.

8. "Protective services worker" means a person who has been selected by and trained under the requirements prescribed by the department to provide protective services.

9. "Vulnerable adult" means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a physical or mental impairment. Vulnerable adult includes an incapacitated person as defined in section 14-5101.

B. Protective services programs shall seek to maintain the adult in his familiar environment by strengthening his capacity for self-maintenance or by providing supportive services.

C. Nothing in this section shall be construed to mean that an adult is abused, neglected or in need of protective services for the sole reason that he relies on treatment from a recognized religious method of healing in lieu of medical treatment.

D. For the purposes of this section, a person is not exploited by a transfer of assets if the transfer is to obtain or maintain eligibility for benefits under title 36, chapter 29 or benefits for supplemental security income, medicare or veterans' administration programs and the transfer of assets is between the person and any of the following:

1. The person's spouse.
2. The person's child with a disability.
3. A trust for the benefit of the person's spouse or child with a disability.

E. A transfer of assets for the purpose of obtaining or maintaining eligibility for benefits under title 36, chapter 29 shall comply with 42 United States Code section 1396p and sections 36-2934 and 36-2934.01.

46-452. Protective services worker; powers and duties; immunity; communications

A. A protective services worker shall:

1. Receive reports of abused, exploited or neglected vulnerable adults.
2. Receive from any source oral or written information regarding an adult who may be in need of protective services.
3. On receipt of such information make an evaluation to determine if the adult is in need of protective services and what services, if any, are needed.
4. Offer an adult in need of protective services or his guardian whatever services appear appropriate in view of the evaluation.
5. File petitions as necessary for the appointment of a guardian or conservator or the appointment of a temporary guardian or temporary conservator or make application for a special visitation warrant as provided for in title 14, chapter 5.

B. The department or a protective services worker employed by the department may not be appointed as guardian, conservator or temporary guardian.

C. An adult protective services worker is immune from civil liability for applying for a special visitation warrant or for filing a petition for guardianship or conservatorship unless the application or filing is done in bad faith.

D. For the purposes of this chapter, communications concerning a person who is incarcerated in any jail, prison, detention center or correctional facility or concerning a patient in the Arizona state hospital are not reports that require evaluation by a protective services worker.

46-452.01. Office of state long-term care ombudsman

The office of state long-term care ombudsman is established pursuant to the older Americans act of 1965, as amended (P.L. 100-175; United States Code section 307(a)(12)). The state long-term care ombudsman is under the direct supervision of the department of economic security, aging and adult administration program administrator or his designee. The department shall adopt rules for the purpose of implementing the state long-term care ombudsman program.

46-452.02. Long-term care ombudsman; duties; immunity from liability

A. A representative of the office of the state long-term care ombudsman who performs the official duties of the long-term care ombudsman shall not be liable under state law for the good faith performance of official duties.

B. Official duties of the office of the state long-term care ombudsman include authority to:

1. Enter long-term care facilities to communicate with residents.
2. Hear, investigate and attempt to resolve complaints by agreement, mediation or conciliation.
3. Render advice to residents of facilities.
4. Refer cases involving abuse, neglect, exploitation or health and safety to adult protective services or the appropriate licensing agency.
5. Make appropriate referrals to legal services or other community services.
6. Such other responsibilities as required pursuant to the older Americans Act of 1965, as amended (P.L. 100175, sec. 307 (A) (12); 42 United States Code 3027(A) (12)).

C. Official duties of the office of the state long-term care ombudsman do not include activities performed by a licensed health care provider as defined in section 12-561.

46-453. Immunity of participants; non-privileged communication

A. Any person making a complaint, furnishing a report, information or records required or authorized by this chapter or otherwise participating in the program authorized by this chapter or in a judicial or administrative proceeding or investigation resulting from reports, information or

records submitted or obtained pursuant to this chapter is immune from any civil or criminal liability by reason of such action, unless the person acted with malice or unless such person has been charged with or is suspected of abusing, exploiting or neglecting the vulnerable adult in question. Except as provided in subsection B of this section the physician-patient privilege, husband-wife privilege or any privilege except the attorney-client privilege, provided for by professions such as the practice of social work or nursing covered by law or a code of ethics regarding practitioner-client confidences, both as they relate to the competency of the witness and to the exclusion of confidential communications, shall not pertain in any civil or criminal litigation in which a vulnerable adult's exploitation, abuse or neglect is an issue nor in any judicial or administrative proceeding resulting from a report, information or records submitted or obtained pursuant to section 46-454 nor in any investigation of a vulnerable adult's exploitation, abuse or neglect conducted by a peace officer or a protective services worker.

B. In any civil or criminal litigation in which incapacitation, abuse, exploitation or neglect of a vulnerable adult is an issue, a clergyman or priest shall not, without his consent, be examined as a witness concerning any confession made to him in his role as a clergyman or a priest in the course of the discipline enjoined by the church to which he belongs.

46-454. Duty to report abuse, neglect and exploitation of vulnerable adults; duty to make medical records available; violation; classification

A. A physician, registered nurse practitioner, hospital intern or resident, surgeon, dentist, psychologist, social worker, peace officer or other person who has responsibility for the care of a vulnerable adult and who has a reasonable basis to believe that abuse or neglect of the adult has occurred or that exploitation of the adult's property has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer or to a protective services worker. The guardian or conservator of a vulnerable adult shall immediately report or cause reports to be made of such reasonable basis to the superior court. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday.

B. An attorney, accountant, trustee, guardian, conservator or other person who has responsibility for preparing the tax records of a vulnerable adult or a person who has responsibility for any

other action concerning the use or preservation of the vulnerable adult's property and who, in the course of fulfilling that responsibility, discovers a reasonable basis to believe that exploitation of the adult's property has occurred or that abuse or neglect of the adult has occurred shall immediately report or cause reports to be made of such reasonable basis to a peace officer, to a protective services worker or to the public fiduciary of the county in which the vulnerable adult resides. If the public fiduciary is unable to investigate the contents of a report, the public fiduciary shall immediately forward the report to a protective services worker. If a public fiduciary investigates a report and determines that the matter is outside the scope of action of a public fiduciary, then the report shall be immediately forwarded to a protective services worker. All of the above reports shall be made immediately in person or by telephone and shall be followed by a written report mailed or delivered within forty-eight hours or on the next working day if the forty-eight hours expire on a weekend or holiday.

C. Reports pursuant to subsections A and B shall contain:

1. The names and addresses of the adult and any persons having control or custody of the adult, if known.

2. The adult's age and the nature and extent of the adult's vulnerability.

3. The nature and extent of the adult's injuries or physical neglect or of the exploitation of the adult's property.

4. Any other information that the person reporting believes might be helpful in establishing the cause of the adult's injuries or physical neglect or of the exploitation of the adult's property.

D. Any person other than one required to report or cause reports to be made in subsection A who has a reasonable basis to believe that abuse or neglect of a vulnerable adult has occurred may report the information to a peace officer or to a protective services worker.

E. A person having custody or control of medical or financial records of a vulnerable adult for whom a report is required or authorized under this section shall make such records, or a copy of such records, available to a peace officer or adult protective services worker investigating the vulnerable adult's neglect, exploitation or abuse on written request for the records signed by the peace officer or adult protective services worker. Records disclosed pursuant to this subsection are confidential and may be used only in a judicial or administrative proceeding or investigation resulting from a report required or authorized under this section.

F. If reports pursuant to this section are received by a peace officer, the peace officer shall notify the adult protective services of the department of economic security as soon as possible and make such information available to them.

G. A person required to receive reports pursuant to subsection A, B or D may take or cause to be taken photographs of the abused adult and the vicinity involved. Medical examinations including radiological examinations of the involved adult may be performed. Accounts, inventories or audits of the exploited adult's property may be performed. The person, department, agency or court that initiates such photographs, examinations, accounts, inventories or audits shall pay the associated costs in accordance with existing statutes and rules. If any person is found to be responsible for the abuse, neglect or exploitation of a vulnerable adult in a criminal or civil action, the court may order the person to make restitution as the court deems appropriate.

H. If psychiatric records are requested pursuant to subsection E, the custodian of the records shall notify the attending psychiatrist, who may excise from the records, before they are made available:

1. Personal information about individuals other than the patient.

2. Information regarding specific diagnosis or treatment of a psychiatric condition, if the attending psychiatrist certifies in writing that release of the information would be detrimental to the patient's health or treatment.

I. If any portion of a psychiatric record is excised pursuant to subsection H, a court, upon application of a peace officer or adult protective services worker, may order that the entire record or any portion of such record containing information relevant to the reported abuse or neglect be made available to the peace officer or adult protective services worker investigating the abuse or neglect.

J. A licensing agency shall not find that a reported incidence of abuse at a care facility by itself is sufficient grounds to permit the agency to close the facility or to find that all residents are in imminent danger.

K. A person who violates any provision of this section is guilty of a class 1 misdemeanor.

46-455. Permitting life or health of a vulnerable adult to be endangered by neglect; violation; classification; civil remedy; definition

A. A person who has been employed to provide care, who is a de facto guardian or de facto conservator or who has been appointed by a court to provide care to a vulnerable adult and who causes or permits the life of the adult to be endangered or that person's health to be injured or endangered by neglect is guilty of a class 5 felony.

B. A vulnerable adult whose life or health is being or has been endangered or injured by neglect, abuse or exploitation may file an action in superior court against any person or enterprise that has been employed to provide care, that has assumed a legal duty to provide care or that has been appointed by a court to provide care to such vulnerable adult for having caused or permitted such conduct. A physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25, while providing services within the scope of that person's licensure, is not subject to civil liability for damages under this section unless either:

1. At the time of the events giving rise to a cause of action under this section, the person was employed or retained by the facility or designated by the facility, with the consent of the person, to serve the function of medical director as that term is defined or used by federal or state law governing a nursing care institution, an assisted living center, an assisted living facility, an assisted living home, an adult day health care facility, a residential care institution, an adult care home, a skilled nursing facility or a nursing facility.

2. At the time of the events giving rise to a cause of action under this section, all of the following applied:

(a) The person was a physician licensed pursuant to title 32, chapter 13 or 17, a podiatrist licensed pursuant to title 32, chapter 7, a registered nurse practitioner licensed pursuant to title 32, chapter 15 or a physician assistant licensed pursuant to title 32, chapter 25.

(b) The person was the primary provider responsible for the medical services to the patient while the patient was at one of the facilities listed in paragraph 1 of this subsection.

C. Any person who was the primary provider of medical services to the patient in the last two years before it was recommended that the patient be admitted to one of the facilities listed in subsection B, paragraph 1 of this section is exempt from civil liability for damages under this section.

D. For the purposes of this section, primary provider does not include a consultant or specialist as listed in subsection B, paragraph 2, subdivision (a) of this section who is requested by the primary provider to provide care to the patient for whom the primary provider is responsible, unless that consultant or specialist assumes the primary care of the patient.

E. The state may file an action pursuant to this section on behalf of those persons endangered or injured to prevent, restrain or remedy the conduct described in this section.

F. The superior court has jurisdiction to prevent, restrain and remedy the conduct described in this section, after making provision for the rights of all innocent persons affected by such conduct and after a hearing or trial, as appropriate, by issuing appropriate orders.

G. Before a determination of liability, the orders may include, but are not limited to, entering restraining orders or temporary injunctions or taking such other actions, including the acceptance of satisfactory performance bonds, the creation of receiverships and the appointment of qualified receivers and the enforcement of constructive trusts, as the court deems proper.

H. After a determination of liability such orders may include, but are not limited to:

1. Ordering any person to divest himself of any direct or indirect interest in any enterprise.

2. Imposing reasonable restrictions, including permanent injunctions, on the future activities or investments of any person including prohibiting any person from engaging in the same type of endeavor or conduct to the extent permitted by the constitutions of the United States and this state.

3. Ordering dissolution or reorganization of any enterprise.

4. Ordering the payment of actual and consequential damages, as well as costs of suit, to those persons injured by the conduct described in this section. The court or jury may order the payment of punitive damages under common law principles that are generally applicable to the award of punitive damages in other civil actions.

5. Ordering the payment of all costs and expenses of the prosecution and investigation of the conduct described in this section, civil and criminal, incurred by the state or county as appropriate to be paid to the general fund of this state or the county that incurred such costs and expenses.

I. A defendant convicted in any criminal proceeding is precluded from subsequently denying the essential allegations of the criminal offense of which he was convicted in any civil proceeding.

For the purposes of this subsection, a conviction may result from a verdict or plea, including a plea of no contest.

J. A person who files an action under this section shall serve notice and one copy of the pleading on the attorney general within thirty days after the action is filed with the superior court. The notice shall identify the action, the person and the person's attorney. Service of the notice does not limit or otherwise affect the right of this state to maintain an action under this section or intervene in a pending action nor does it authorize the person to name this state or the attorney general as a party to the action. Upon receipt of a complaint the attorney general shall notify the appropriate licensing agency.

K. The initiation of civil proceedings pursuant to this section shall be commenced within two years after actual discovery of the cause of action.

L. Except for the standard of proof provided in subsection H, paragraph 4 of this section, the standard of proof in civil actions brought pursuant to this section is the preponderance of the evidence.

M. Except in cases filed by a county attorney, the attorney general, upon timely application, may intervene in any civil action or proceeding brought under this section if the attorney general certifies that in his opinion the action is of special public importance. Upon intervention, the attorney general may assert any available claim and is entitled to the same relief as if the attorney general had instituted a separate action.

N. In addition to the state's right to intervene as a party in any action under this section, the attorney general may appear as a friend of the court in any proceeding in which a claim under this section has been asserted or in which a court is interpreting section 46-453 or this section.

O. A civil action authorized by this section is remedial and not punitive and does not limit and is not limited by any other civil remedy or criminal action or any other provision of law. Civil remedies provided under this title are supplemental and not mutually exclusive.

P. The cause of action or the right to bring a cause of action pursuant to subsection B or E of this section shall not be limited or affected by the death of the vulnerable adult.

Q. For the purposes of this section, "enterprise" means any corporation, partnership, association, labor union or other legal entity, or any group of persons associated in fact although not a legal entity, that is involved with providing care to a vulnerable adult.

46-456. Duty to a vulnerable adult; financial exploitation; civil penalties; exceptions; definitions

A. A person who is in a position of trust and confidence to a vulnerable adult shall use the vulnerable adult's assets solely for the benefit of the vulnerable adult and not for the benefit of the person who is in the position of trust and confidence to the vulnerable adult or the person's relatives unless any of the following applies:

1. The superior court gives prior approval of the transaction on a finding that the transaction is for the benefit of the vulnerable adult.

2. The transaction is specifically authorized in a valid durable power of attorney that is executed by the vulnerable adult as the principal or in a valid trust instrument that is executed by the vulnerable adult as a settlor.

3. The transaction is required in order to obtain or maintain eligibility for services under title 36, chapter 29.

4. The person in the position of trust and confidence to the vulnerable adult is the vulnerable adult's spouse and the transaction furthers the interest of the marital community, including applying for benefits pursuant to title 36, chapter 29 or benefits for supplemental security income, medicare or veterans' administration programs.

B. A person who violates subsection A of this section or section 13-1802, subsection B shall be subject to actual damages and reasonable costs and attorney fees in a civil action brought by or on behalf of a vulnerable adult and the court may award additional damages in an amount up to two times the amount of the actual damages.

C. In addition to the damages prescribed in subsection B of this section, the court may:

1. Order a person who violates subsection A of this section or section 13-1802, subsection B to forfeit all or a portion of the person's:

(a) Interest in any governing instrument.

(b) Benefits under title 14, chapter 2 with respect to the estate of the vulnerable adult, including an intestate share, an elective share, an omitted spouse's share, an omitted child's share, a homestead allowance, any exempt property and a family allowance. If the vulnerable adult died intestate, the vulnerable adult's intestate estate passes as if the person who violated subsection A of this section or section 13-1802, subsection B disclaimed that person's intestate share to the extent the court orders that person to forfeit all or a portion of the person's benefits under title 14, chapter 2.

2. Revoke, in whole or in part, any revocable:

(a) Disposition or appointment of property that is made in a governing instrument by the vulnerable adult to the person who violates subsection A of this section or section 13-1802, subsection B.

(b) Provision by the vulnerable adult that is contained in a governing instrument that confers a general or non-general power of appointment on the person who violates subsection A of this section or section 13-1802, subsection B.

(c) Nomination or appointment by the vulnerable adult that is contained in a governing instrument that nominates or appoints the person who violates subsection A of this section or section 13-1802, subsection B to serve in any fiduciary or representative capacity, including serving as a personal representative, executor, guardian, conservator, trustee or agent.

3. Sever the interests of the vulnerable adult and the person who violates subsection A of this section or section 13-1802, subsection B in any property that is held by them at the time of the violation as joint tenants with the right of survivorship or as community property with the right of survivorship, and transform the interests of the vulnerable adult and the person who violated subsection A of this section or section 13-1802, subsection B into tenancies in common. To the extent that the person who violated subsection A of this section or section 13-1802, subsection B did not provide adequate consideration for the jointly held interest, the court may cause the person's interest in the subject property to be forfeited in whole or in part.

D. A revocation or a severance under subsection C, paragraph 2 or 3 of this section does not affect any third party interest in property that was acquired for value and in good faith reliance on apparent title by survivorship in the person who violated subsection A of this section or section 13-1802, subsection B unless a writing declaring the severance has been noted, registered, filed or recorded in records that are appropriate to the kind and location of the property and that are relied on as evidence of ownership in the ordinary course of transactions involving that property.

E. If the court imposes a revocation under subsection C, paragraph 2 of this section, provisions of the governing instrument shall be given effect as if the person who violated subsection A of this section or section 13-1802, subsection B disclaimed all provisions revoked by the court or, in the case of a revocation of a nomination in a fiduciary or representative capacity, the person

who violated subsection A of this section or section 13-1802, subsection B predeceased the decedent.

F. Section 46-455, subsections F, G, H, I, K, L, M and P also apply to civil violations of this section.

G. The vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult's estate has priority to, and may file, a civil action under this section. If an action is not filed by the vulnerable adult or the duly appointed conservator or personal representative of the vulnerable adult's estate, any other interested person, as defined in section 14-1201, may petition the court for leave to file an action on behalf of the vulnerable adult or the vulnerable adult's estate. Notice of the hearing on the petition shall comply with section 14-1401.

H. Subsections A, B, C, D, E and F of this section do not apply to an agent who is acting within the scope of the person's duties as, or on behalf of, any of the following:

1. A bank, financial institution or escrow agent licensed or certified pursuant to title 6.
2. A securities dealer or salesman registered pursuant to title 44, chapter 12, article 9.
3. An insurer, including a title insurer, authorized and regulated pursuant to title 20.
4. A health care institution licensed pursuant to title 36, chapter 4 that provides services to the vulnerable adult.

I. A civil action brought by a person in a position of trust and confidence against a vulnerable adult regarding a governing instrument established by the vulnerable adult is presumed not to be for the benefit of the vulnerable adult unless it is shown otherwise by clear and convincing evidence.

J. For the purposes of this section:

1. "Asset" includes all forms of personal and real property.
2. "Disposition or appointment of property" includes a transfer of an item of property or any other benefit of a beneficiary designated in a governing instrument.
3. "For the benefit of the vulnerable adult" includes any act that is consistent with the clearly stated wishes of the vulnerable adult found by the court to be made without coercion and while the vulnerable adult was of sound mind.
4. "Governing instrument" means a deed, a will, a trust, a custodianship, an insurance or annuity policy, an account with pay on death designation, a security registered in beneficiary form, a pension, a profit sharing, retirement or similar benefit plan, a family limited partnership, an

instrument creating or exercising a power of appointment, a power of attorney, an estate planning document or a dispositive, appointive or nominative instrument of any similar type.

5. "Position of trust and confidence" means that a person is any of the following:

(a) A person who has assumed a duty to provide care to the vulnerable adult.

(b) A joint tenant or a tenant in common with a vulnerable adult.

(c) A person who is in a fiduciary relationship with a vulnerable adult including a de facto guardian or de facto conservator.

(d) A person who is in a confidential relationship with the vulnerable adult. The issue of whether a confidential relationship exists shall be an issue of fact to be decided by the court based on the totality of the circumstances.

(e) A beneficiary of the vulnerable adult in a governing instrument.

6. "Revocable" means a disposition, appointment, provision or nomination under which the vulnerable adult, at the time of or immediately before death, was alone empowered, by law or under the governing instrument, to cancel the designation in favor of the person who violated subsection A of this section or section 13-1802, subsection B, whether or not the vulnerable adult was then empowered to designate the vulnerable adult in place of the person who violated subsection A of this section or section 13-1802, subsection B or the vulnerable adult then had capacity to exercise the power.

46-457. Elder abuse central registry; mandatory reporting; release of information

A. A person who files an action under this article shall serve notice and one copy of the pleading with the attorney general within thirty days after the action is filed in the superior court. The notice shall identify the action, the person against whom the civil complaint has been filed and that person's attorney. The person who files an action is responsible for submitting a report on the final disposition of the case within thirty days after the final action is taken.

B. Except as otherwise provided in this subsection, a state agency other than adult protective services that renders an administrative decision that substantiates the allegation of abuse or that files a civil action that alleges abuse, neglect or financial exploitation pursuant to this article or title 36 shall serve notice and one copy of the administrative decision or pleading with the attorney general within thirty days after the administrative decision is rendered or within thirty days after the action is filed in the superior court. The agency is responsible for submitting a

report on the final disposition of the case within thirty days after the final action is taken. Adult protective services shall report its findings to the registry established pursuant to section 46-459. The department of economic security shall not provide the notice prescribed in this subsection for information maintained in the adult protective services registry pursuant to section 46-459.

C. If the victim of the offense is a vulnerable adult, a person who files a criminal complaint or indictment involving a violation of this article or section 13-1102, 13-1103, 13-1104, 13-1105, 13-1201, 13-1203, 13-1204, 13-1303, 13-1304, 13-1403, 13-1404, 13-1406, 13-1802, 13-1807, 13-2002, 13-2310 or 13-3623 shall submit a copy of the criminal complaint or indictment to the attorney general within thirty days after arraignment. Within thirty days of the date of issuance of the minute entry the court shall endorse to the attorney general a copy of the sentencing minute entry or the minute entry reflecting the case has been dismissed or a judgment of acquittal has been entered. The attorney general shall develop guidelines to implement this subsection.

D. The attorney general shall maintain a registry containing the names of persons pursuant to subsection A, B or C of this section with the date the action was filed with the superior court or the date the administrative decision was rendered, the dates of the conduct set forth in the complaint, the indictment or decision, the general nature of the complaint, indictment or decision and the disposition of the complaint, indictment or decision, if known.

E. The information maintained pursuant to subsection D of this section is available to the public on written request to the custodian of the registry.

F. A person may submit a written statement on that person's own behalf to the custodian of the registry. The statement is part of the records for distribution in response to all inquiries concerning that person.

G. A person or agency that distributes information in the registry in good faith is not subject to civil or criminal liability.

46-458. Hearing process; definitions

A. After completing its investigation, the department shall notify a person who is alleged to have abused, neglected or exploited a vulnerable adult that the department intends to enter a substantiated finding of abuse, neglect or exploitation in the registry and of that person's right:

1. To receive a copy of the report containing the allegation and findings.

2. To a hearing before entry into the registry pursuant to section 46-459.

B. The department shall send the notice prescribed in subsection A of this section by first class mail not more than fifteen calendar days after completion of the investigation.
C. A request for a hearing on the proposed finding must be received by the department within fifteen calendar days of the notice date.
D. If a request for a hearing is made pursuant to subsection C of this section, the department shall notify the reporting source, the vulnerable adult and the vulnerable adult's representative of record and conduct a review before the hearing. The department shall provide an opportunity for the accused person to provide written or verbal information to support the position that the department should not substantiate the allegation and an opportunity for the reporting source, the vulnerable adult and the vulnerable adult's representative of record to respond to the information provided by the accused person. If the department determines that the accused person did not engage in the alleged conduct by a preponderance of the evidence, the department shall amend the information or finding in the report and shall notify the person, and a hearing shall not be held.
E. Notwithstanding section 41-1061, subsection B, the notification prescribed in subsection A of this section shall also state that if the department does not amend the information or finding in the report as prescribed in subsection D of this section within sixty days after it receives the request for a hearing the person has a right to a hearing unless either:
1. The person is a party in a civil, criminal or administrative proceeding in which the allegations of abuse, neglect or exploitation are at issue.
2. A court or administrative law judge has made findings as to the alleged abuse, neglect or exploitation.
F. If the department does not amend the information or finding in the report as prescribed in subsection D of this section, the department shall notify the office of administrative hearings of the request for a hearing not later than five days after completion of the review. The department shall forward all records, reports and other relevant information with the request for hearing within ten days after the request is made. The department shall redact the identity of the reporting source before transmitting the information to the office of administrative hearings.
G. The office of administrative hearings shall hold a hearing pursuant to title 41, chapter 6, article 10, with the following exceptions:

1. A vulnerable adult who is the victim of or a witness to abuse, neglect or exploitation is not required to testify at the hearing.
2. The identity of the reporting source of the abuse, neglect or exploitation shall not be disclosed without the permission of the reporting source.
3. The reporting source is not required to testify.
4. A written statement from the reporting source may be admitted if the time, content and circumstances of that statement are sufficiently indicative of its reliability.
5. If the person requesting the hearing fails to appear, the hearing shall be vacated and a substantiated finding of abuse, neglect or exploitation shall be entered. On good cause shown, the hearing may be rescheduled if the request is made within fifteen calendar days after the date of the notice vacating the hearing for failure to appear.
H. On completion of the presentation of evidence, the administrative law judge shall determine whether the department's finding that the accused engaged in the alleged conduct is supported by a preponderance of the evidence. If the administrative law judge determines there is insufficient evidence to sustain the department's burden of proof, the administrative law judge shall order the department to amend the information or finding in the report.
I. Notwithstanding section 41-1959, the department shall notify the person who is the subject of the investigation and the person who reported the allegations of abuse, neglect or exploitation of the outcome of the investigation at one of the following times:
1. At the conclusion of the investigation if the report is unsubstantiated or if, by a preponderance of the evidence, there is reason to believe the allegation did occur but no perpetrator has been identified.
2. After the time to request a hearing has lapsed pursuant to subsection C of this section without the department receiving a request for a hearing.
3. After a final administrative decision has been made.
J. All final decisions substantiating an allegation of abuse, neglect or exploitation shall be reported to the adult protective services registry, pursuant to section 46-459, within thirty days after the decision is rendered.
K. Any person receiving information pursuant to this section shall maintain its confidentiality as provided by section 41-1959, subsection A.

L. This section applies only to those allegations of abuse, neglect or exploitation received by the department on or after July 1, 2007.

M. The department is exempt from the rule making requirements of title 41, chapter 6 for the purposes of implementing this section.

N. For the purposes of this section:

1. "Amend the finding" means to change the finding from substantiated to unsubstantiated.

2. "Amend the information" means to change information identifying the accused of having abused, neglected or exploited a vulnerable adult.

3. "Final decision" means a decision for which the time to appeal has expired or from which no further appeal is available.

46-459. Adult protective services registry

A. The department of economic security shall maintain a registry of substantiated reports of abuse, neglect and exploitation of vulnerable adults made pursuant to section 46-458. The department shall incorporate duplicate reports on the same incident in the original report and shall not classify duplicate reports as new reports.

B. The registry shall contain the name and date of birth of the person determined to have abused, neglected or exploited a vulnerable adult, the nature of the allegation made and the date and description of the disposition of the allegation. The names of the vulnerable adult and reporting source shall not be reported to the registry.

C. The department shall maintain a report in the registry for twenty-five years after the date of entry.

D. The department shall annually purge reports and investigative outcomes received pursuant to the time frames prescribed in subsection C of this section.

E. Any person who was the subject of an adult protective services investigation may request confirmation that the department has purged information about the person pursuant to subsection D of this section. On receipt of this request, the department shall provide the person with written confirmation that the department has no record containing identifying information about that person.

F. Information maintained pursuant to subsection B of this section shall be made available to the public on written request and online. The department may charge a fee for processing written requests.

LOTTERY COMMISSION (F-17-0507)
Title 19, Chapter 3, Article 5, Procurements

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-6**

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

FROM: Marcus McGillivray, Staff Intern

DATE : April 18, 2017

SUBJECT: **LOTTERY COMMISSION (F-17-0507)**
Title 19, Chapter 3, Article 5, Procurements

COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

This is a five-year-review report from the State Lottery Commission (Commission) reviewing 68 rules in A.A.C. Title 19, Chapter 3, Article 5 relating to agency procurements. The rules contain general procurement definitions, guidance on vendor selection criteria, methodology for source selection, solicitation procedures, general solicitation and evaluation processes, and protest and appeal requirements. Most of the rules were last amended in November 2016, while the oldest rules were last amended in January 2007.

The Arizona Lottery was voted into existence by a public initiative in November 1980. The objective of the Commission is to "produce the maximum amount of net revenue consonant with the dignity of the state" A.R.S. § 5-554(B). The Commission currently offers seven draw games and over 50 instant-win "scratch it" tickets. At least 50% of the Lottery's proceeds must be allocated towards prize payments; the remainder of the proceeds go to various public benefit programs, the state general fund, and bond debt payments. In fiscal year 2016, total sales exceeded $870 million, over $200 million of which was allocated to statutory beneficiaries.

Proposed Action

The Commission indicates that no action on the rules is planned at this time.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Commission has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Commission indicates that the rules are generally effective in achieving their objectives.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

The Commission has not received any written criticisms regarding these rules in the previous five years.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Commission cites to both general and specific statutory authority.

- A.R.S. § 5-554(B) states the Commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state, and requires the Commission to adopt rules to achieve those objectives.
- A.R.S. § 5-554(C) requires the Commission to authorize the Director to issue orders and shall approve orders issued by the Director for the necessary operation of the lottery: the price of tickets, the themes, gameplay styles, and names of lottery games, the price structure of lottery games, and the frequency of drawings.
- A.R.S. § 41-2501(G) states that the Commission is exempt from the procurement chapter regarding the design and operation of the lottery or purchase of lottery equipment, tickets, and related materials; but the Commission shall adopt rules substantially equivalent to the policies and procedures in the procurement chapter. All other procurement shall be regulated by the procurement chapter.

5. <u>Has the agency analyzed the rules' consistency with other rules and statutes?</u>

Yes. The Commission indicates that the rules are generally consistent with other rules and statutes, with three exceptions:

- Section 501: The definition of "services" should be amended to mirror A.R.S. § 41-2503(35), and the definition for "price date" should be amended to mirror the working in state procurement rules.
- Section 514: This rule should be updated to reflect the procedures in the Arizona Procurement Code regarding the opening and recording of solicitation offers.

- Section 524: This rule should be updated to reflect the procedures in the state procurement rules regarding when/how the procurement officer may request best and final offers.

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

Yes. The Commission states that the rules are enforced as written.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Commission believes that the rules are generally clear, concise, and understandable with the following exceptions:

- R19-3-501: the rule contains definitions for terms not used in this article; defining the term "aggregate dollar amount" would improve the clarity of this rule.
- R19-3-504: subsection (A) should be removed from this rule and added to R19-3-549 as subsection (C). Subsection (B) should be eliminated because this process is addressed by other statutes and rules.
- R19-3-510: the rule could be improved by removing or rewording confusing language regarding the pre-offer conferences.
- R19-3-524: subsections (A) and (B) are redundant and should be combined.
- R19-3-526: the first sentence in subsection (C) should be reworded to be more clear and understandable.

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

No. There are no federal laws applicable to these rules.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

These rules do not require the issuance of a regulatory permit, license, or agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Not applicable.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. The Commission completed rulemakings in 2013 and 2016 which addressed the proposed courses of action identified in the previous report.

11. Has the agency included a proposed course of action?

No. The Commission recently completed a rulemaking regarding this article in 2016. Although the Commission noted potential improvements to these rules, they do not currently plan on initiating a rulemaking regarding this article due to competing Commission priorities.

Conclusion

This report meets the requirements of A.R.S. § 41-1056 and R1-6-301. Staff recommends that the report be approved.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-6**

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

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **LOTTERY COMMISSION (F-17-0507)**
Title 19, Chapter 3, Article 5, Procurements

I reviewed the five-year-review report's economic, small business, and consumer impact comparison for compliance with A.R.S. § 41-1056 and make the following comments.

1. <u>Economic Impact Comparison</u>

Economic, small business, and consumer impact statements (EIS) from the most recent rulemakings were available for the Article 5 rules contained in the five-year-review report.

The rules contained in Article 5 establish the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. Procurement staff are supplied by the Arizona Department of Administration pursuant to an interagency services agreement. The Commission concludes that the economic impact has generally been as predicted in the prior EIS for the rules in the Article cited above.

The most recent amendments to Article 5 were effective in November 2016. The rules were extensively amended to make them significantly equivalent to the policies and procedures of the Arizona Procurement Code as required in A.R.S. § 41-2501(G), and to conform with the 2015 approved changes to state procurement rules. The amendments encourage procurements that specifically targeted to small businesses. The Lottery has not experienced any additional costs as a result of the rulemaking.

<u>2.</u> <u>Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?</u>

The Commission has determined that the rules in Articles 5 are mostly effective and impose the least burden and costs to the regulated community. The Commission anticipates amending several of the rules in Articles 5 to clarify language and remove redundancies. The Commission anticipates submitting the rulemaking by December 2018

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was submitted to the agency by another person that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

Douglas A. Ducey
Governor

Gregory R. Edgar
Executive Director

March 8, 2017

Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue # 402
Phoenix, AZ 85007

RE: Five Year Review Report
19 A.A.C. 3, Article 5. Procurements

Dear Ms. Ong:

Pursuant to A.R.S. § 41-1056, the Lottery has reviewed 19 A.A.C. 3, Article 5 and hereby submits its five-year-review report. Copies of the existing rules and authorizing statutes are attached to the report. The previous five-year-review, done in 2007, did not include an economic impact statement, so none is attached. The Lottery believes the economic impact of this rule has not changed significantly.

The Lottery is in compliance with A.R.S. § 41-1091 that governs the directory of rules and substantive policy statements.

Please contact Lisa Wahlin at 480-921-4401, or by email at lwahlin@azlottery.gov, with any questions regarding the report.

Sincerely,

Gregory R. Edgar
Executive Director

Enclosures

ARIZONA LOTTERY

Five-Year-Review Report

19 A.A.C. 3

Article 5: Procurements

March 2017

HISTORICAL OVERVIEW OF AGENCY

Agency Mission:

To support Arizona programs for the public benefit by maximizing net revenue in a responsible manner.

Agency Background:

The Arizona Lottery was voted into existence by a public initiative in November 1980, becoming the first state west of the Mississippi to have a legal, state-administered lottery. Although the initial approval margin was slim—51 to 49 percent—subsequent referendums showed high public support. In November 1997, 68 percent of the voters approved the Lottery for five years and in November 2002, voters extended the Lottery for another ten years with a 73 percent majority. As a result of legislation in the 2010 Legislative 6th Special Session, the existing Lottery will sunset July 2012, immediately replaced by a "new" Lottery that will terminate in 2035.

Lottery sales began July 1, 1981, with a single $1 "Scratch it Rich" instant game that sold 21.4 million tickets in ten days! Instant ticket games remained the only product until 1984 when the Lottery introduced its first online (draw) game, The Pick. Over the years, additional draw games have periodically been introduced and the number of instant ticket games has grown significantly. The Lottery currently offers seven draw games and has more than 50 instant ticket games in market each year. As a result of legislation in the 2010 Legislative Session, the Lottery also became the provider of instant tab games that are sold by charitable organizations. These organizations earned approximately $1 million in commissions to help support charitable activities in FY15. Legislation passed in the 2015 Legislative Session authorized the Lottery to sell game products in age-restricted locations, with $1 million of proceeds allocated to the Internet Crimes Against Children Fund and the Victim's Rights Enforcement Fund.

Since its inception, the Lottery's mandate has been to maximize net revenue consonant with the dignity of the state. The Lottery is overseen by an Executive Director appointed by the Governor,

in addition to a five-member Commission, also appointed by the Governor. The Lottery is entirely self-supporting, receiving no monies from the state general fund. The Lottery sells products and redeems prizes through a state-wide network of approximately 2700 licensed retailers, who receive a commission on each ticket sold.

A portion of Lottery proceeds is appropriated to pay for Lottery operating costs, and at least 50% of revenues must be utilized for payment of prizes. Remaining Lottery funds are statutorily directed to various benefiting funds including the state general fund. In FY10, the State issued bonds against future Lottery revenues in the amount of $450 million. As a result, the Lottery is responsible for meeting bond debt service payments through 2029, in addition to traditional beneficiary obligations.

The Lottery has achieved record sales levels in recent years. In fiscal year 2016, total sales exceeded $870 million and transfers to statutory beneficiaries totaled $205,828,826.

OVERVIEW OF 5-YEAR REVIEW

A.R.S. § 5-554 requires the Commission to authorize the Lottery Director to adopt rules in accordance with Title 41, Chapter 6. Rules adopted may include matters necessary or desirable for the efficient and economical operation and administration of the Lottery, as provided in A.R.S. § 5-554. A.R.S. § 41-2501(G) exempts the Lottery from provisions of the Arizona Procurement Code for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials and requires the Lottery Director to adopt rules substantially equivalent to the policies and procedures of the Arizona Procurement Code for these types of procurements.

A.A.C. Title 19, Chapter 3, Article 5, Procurements, sets forth the policies and procedures for procurements relating to the design and operation of the Lottery or purchase of Lottery equipment, tickets, and related materials. The most recent amendments to Article 5 were effective in November 2016. The rules were extensively amended to make them substantially equivalent to the policies and procedures of the Arizona Procurement Code as required in A.R.S. § 41-2501(G), and to conform with the 2015 approved changes to state procurement rules.

The review of these rules was conducted by Arizona Lottery procurement and legal staff. The rules were reviewed for consistency and conformity with state procurement rules, and for overall clarity. As a result of the evaluation, the agency plans to amend at least ten rules to address issues outlined in the report. The Lottery proposes to retain the majority of the rules as written since they remain consistent with the Arizona Procurement Code and state procurement rules, and are sufficiently clear and understandable. These rules continue to protect the interests of potential contractors, the Lottery, and the state. Because the Lottery's rules must be substantially equivalent to the State Procurement Code, any substantive amendments would include any recent revisions to state procurement statutes or rules. The Lottery anticipates submitting a final rulemaking package to Council by December 2018, provided the rulemaking moratorium has been lifted. The Lottery will request an exemption in order to complete the amendments, but recognizes that it may not sufficiently meet the requirements set forth in the Executive Order.

INFORMATION THAT IS IDENTICAL FOR ALL THE RULES

2. Written criticisms:

No written criticisms of the rules have been received in the last five years.

3. Statutory authority:

General: A.R.S. § 5-554.

Specific: A.R.S. § 41-2501(G).

6. Economic, small business and consumer impact comparison:

The last economic impact statement was prepared when these rules were amended and filed with Council in September 2016. After review, the Lottery believes the actual economic impact of the rules has not differed significantly from the economic impact statement submitted in 2016. The rules continue to primarily affect the agency and businesses that supply products or services to the Lottery. Lottery costs include time spent by procurement staff to process purchases and secure contracts, and the cost of the procurement itself. Procurement staff are supplied by the Arizona Department of Administration pursuant to an interagency services agreement. These costs continue to be included in the Lottery's annual appropriation. Consistent with the previous economic impact statement, the Lottery has not experienced any additional costs as a result of the rulemaking.

The rules were recently amended to provide consistency with policies and procedures of the Arizona Procurement Code, as required by A.R.S. § 41-2501(G). The rules provide for competition, consistency, and equal treatment of all contractors with respect to procurement procedures. The impact on small businesses should be positive. These businesses will benefit from procurements specifically targeted to small businesses as provided in R19-3-532, consistent with state procurement rules. As noted in the previous economic impact statement, the 2016 rulemaking is not anticipated to have any immediate measurable impact on state revenues or expenses.

7. Analysis submitted by another person:

No person has submitted an analysis to the agency that compares the rules' competitive impact on businesses in this state to the impact on businesses in other states.

9. Burden and costs to persons regulated by the rule:

While the review report notes that some individual rules can be improved, the agency

believes the rules as a whole impose the least burden and cost to persons regulated by the rules. As required by A.R.S. § 41-2501(G), these rules are substantially equivalent to the policies and procedures of the Arizona Procurement Code. Procurement procedures ensure fairness to potential vendors while providing the best value to the Lottery and the state. These benefits outweigh any necessary compliance costs.

10. Stringency compared with federal law:

There are no federal laws applicable to these rules.

11. Compliance with § 41-1037 regarding the issuance of a permit, license, or agency authorization:

These rules do not require the issuance of a regulatory permit, license, or agency authorization.

13. Agency enforcement of the rules:

The Lottery follows the rules as written. The rules are fairly and consistently enforced.

14. Proposed course of action:

The Lottery completed a rulemaking on this article in 2016. Although some recommendations for improvements are included herein, the Lottery has no plans to pursue these changes through another rulemaking, given that one was just completed and Lottery has prioritized pursuing rules changes to other articles.

ANALYSIS OF INDIVIDUAL RULES

R19-3-501. Definitions

1. Objective and Effectiveness:

The rule defines terms used in 19 A.A.C. 3, Article 5, to clarify meanings that are not self-evident and to allow for consistent interpretation of Article requirements. The rule is partially effective but contains several unnecessary definitions. For example, the rule includes definitions for terms that are not used anywhere else in the Article.

4. Consistency with statutes and rules:

The rule is generally consistent with statutes and rules but needs a few changes. The definition for "Services" should be amended to mirror A.R.S. § 41-2503(35). The definition for "price data" should be amended to be consistent with the wording in the state procurement rules.

5. Clarity, conciseness and understandability:

The rule is generally clear, concise, and understandable, but could be improved by removing definitions for terms that are not used in Article 5 or refer to processes not used by the agency, such as "affiliate," "governing instruments," "multi-step sealed bidding," "purchase request," "reverse auction," and "technical offer." Clarity could also be improved by defining the term "aggregate dollar amount."

8. Previous five-year-review:

The Lottery has completed two rulemakings since the 2012 five-year-review, one in 2013 and another in 2016. The Lottery added definitions to enhance effectiveness and removed unnecessary definitions, as recommended in the 2011 five-year-review.

R19-3-502. Written Determination

2. <u>Objective and Effectiveness:</u>

The rule requires that, when a written determination is required by law the procurement officer must include the basis for the action in the written determination. By requiring documentation of procurement decisions, the rule ensures transparency and accountability to interested parties and the public.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-503. Confidential Information

2. <u>Objective and Effectiveness:</u>

The rule outlines the procedures for an offeror to follow to request that information submitted in an offer, specification or protest be considered confidential information and not be disclosed. It also outlines the process the procurement officer should follow to determine whether the information is confidential. The rule protects offerors by providing a process in which an offeror can shield proprietary information that is included in an offer from public disclosure.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rules is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-504. General Provisions

2. <u>Objective and Effectiveness:</u>

The rule sets forth two general unrelated procurement provisions. Section A ensures that someone who acts as an advisor to the Lottery on a procurement does not benefit from the resulting contract. The meaning and objective of Section B is unclear as to whose fully approval the Director must obtain before paying for a material or service.

4. <u>Consistency with statutes and rules:</u>

The rule is generally consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is concise, but not clear or understandable. Section A should be removed from the "general provisions" section and added to R19-3-549 Conflict of Interest as Section C. Section B should be eliminated as an unnecessary provision. The process for Lottery purchases and expenditures is provided for in statute and other rules.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-505. Prospective Suppliers List

1. Objective and Effectiveness:

The rule authorizes the procurement officer to use the state procurement supplier list or create a list specifically for the Lottery. The rule allows the Lottery to create a suppliers list to ensure that prospective bidders who have expertise in providing lottery-specific services or materials receive notification of Lottery solicitations.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended this rule to incorporate the changes recommended in the 2011 five-year-review.

R19-3-506. Source Selection Method: Determination Factors

1. <u>Objective and Effectiveness:</u>

The rule provides guidance to the procurement officer in determining the appropriate source selection method for a procurement. The rule ensures that the correct procurement method is based on the aggregate dollar amount of the contract and that sufficient funds are available for the procurement.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended this rule in 2016 to increase clarity, as recommended in the 2011 five-year review.

R19-3-507. Solicitation

2. <u>Objective and Effectiveness:</u>

The rule sets forth the minimum time period between the issuance of a solicitation and the offer due date and time. The rule ensures that offerors have sufficient time to respond to a solicitation but also permits the procurement officer to provide for a shorter time if justified by the circumstances.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-508. Bid Solicitation Requirements

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding the required elements of a bid solicitation. The rule ensures that solicitation documents are uniform and comprehensive by requiring that standard terms and conditions be included and by fully informing interested parties of the offer submission requirements.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-509. Request for Proposal Solicitation Requirements

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding the required elements of a proposal solicitation. It ensures that solicitation documents are uniform and comprehensive by requiring that standard terms and conditions be included and by fully informing interested parties of the offer submission requirements.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-510. Pre-Offer Conferences

2. <u>Objective and Effectiveness:</u>

This rule authorizes the procurement officer to conduct a pre-offer conference and provides direction regarding the timing of the conference. The rule allows for better and more complete offers by allowing potential offerors to ask questions and discuss the procurement requirements in advance of the offer due date.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

While portions of the rule are clear, concise, and understandable, the rule could be improved by removing or rewording confusing language related to the time needed to discuss procurement requirements and solicit comments from prospective offerors.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-511. Solicitation Amendment

2. <u>Objective and Effectiveness:</u>

The rule outlines the circumstances that require the procurement officer to issue a solicitation amendment. The rule ensures that offerors are responding to a correct and complete solicitation, and serves the best interests of the Lottery by allowing the procurement officer to extend the offer due date and time if advantageous to the Lottery.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-512. Modification or Withdrawal of Offer Before Offer Due Date and Time

2. Objective and Effectiveness:

The rule allows an offeror to modify or withdraw an offer before the due date. The rule ensures that, in evaluating offers, the Lottery considers only the most current offers and does not review offers from offerors that do not wish to be considered.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-513. Cancellation of a Solicitation Before Offer Due Date and Time

2. Objective and Effectiveness:

The rule authorizes the procurement officer to cancel a solicitation before the offer due date and time and provides that the procurement officer shall not open offers after cancellation. It protects the Lottery's best interests by allowing a solicitation to be cancelled when circumstances change and it is no longer beneficial to proceed with the solicitation.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-514. Receipt, Opening, and Recording of Offers

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding the opening and recording of offers and ensures the integrity of the procurement process.

4. <u>Consistency with state and federal statutes and rules:</u>

This rule is not entirely consistent with state procurement rules or the Arizona Procurement Code. The rule should accurately reflect state procedures related to the opening and recording of solicitation offers.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended this rule in 2016 to address inaccurate provisions, as recommended in the 2011 five-year review.

R19-3-515. Late Offers, Modifications, Withdrawals

2. <u>Objective and Effectiveness:</u>

The rule outlines the actions the procurement officer must take when an offer, modification, or withdrawal is received after the due date and time. The rule ensures fairness of the procurement by accepting only timely offers, but allowing the procurement officer to make an exception for offers that were untimely because of the action or inaction of the Lottery.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-516. Cancellation of Solicitation After Receipt of Offers and Before Award

2. <u>Objective and Effectiveness:</u>

The rule outlines the procedures the procurement officer must follow if a solicitation is canceled after offer due date and time. It protects the Lottery's best interests by allowing a solicitation to be cancelled when circumstances change and it is no longer beneficial to proceed with the solicitation.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-517. One Offer Received

2. <u>Objective and Effectiveness:</u>

The rule provides guidance to the procurement officer regarding the actions that may be taken when only one offer is received in response to a solicitation. The rule protects the Lottery's best interests by giving the procurement officer discretion to determine whether to award the contract to the offeror, resolicit for new offers, cancel the procurement, or use a different source selection method.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

2. <u>Objective and Effectiveness:</u>

This rule outlines the actions the procurement officer and an offeror must take if a mistake is discovered in an offer after opening, but before contract award and is effective. The rule protects the Lottery's best interests and fair competition by allowing an offeror to correct minor informalities and errors rather than automatically deeming the offer nonresponsive.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed action.

R19-3-519. Extension of Offer Acceptance Period

2. <u>Objective and Effectiveness:</u>

The rule authorizes the procurement officer to extend the offer acceptance period and requires the procurement officer to notify all offerors. Allowing the offer acceptance period to be extended ensures that the Lottery can extend the time for acceptance when circumstances require an extension of time.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-520. Determination of Not Susceptible for Award

2. <u>Objective and Effectiveness:</u>

The rule provides criteria for the procurement officer to consider to determine if an offer is not susceptible for award. The rule ensures efficiency of the procurement process by allowing offers that are not susceptible for award to be eliminated from consideration.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-521. Bid Evaluation

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer and information to the public regarding the criteria and procedures used to evaluate bid offers. The rule requires that the procurement officer consider which offer provides the lowest cost, which protects the Lottery's budget and financial interests.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended this rule to address the issues noted in the 2011 five-year-review, and then recently amended it in 2016 to make it consistent with state procurement rules.

R19-3-522. Clarification of Proposal Offers

2. <u>Objective and Effectiveness:</u>

The rule authorizes the procurement officer to request clarification from offerors at any time after receipt of offers. The rule ensures that the Lottery is able to make the most informed decision on awarding a contract by providing a means for greater understanding of the offers.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement office and interested parties regarding the procedures for conducting negotiations with offerors and explains that offers may be revised during negotiations and is effective. It ensures fairness and confidentiality of proposal negotiations.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-524. Offer Revisions and Best and Final Offers

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding procedures for requesting best and final offers. It also provides direction to the procurement officer and offerors regarding procedures to follow when a mistake in the award determination or the best and final offer. The rule ensures that the procurement officer uniformly handles offer revisions and also ensure fairness in the best and final offer process.

4. <u>Consistency with statutes and rules:</u>

This rule is not entirely consistent with state procurement rules or the Arizona Procurement Code. The rule should be updated to accurately reflect state procedures related to best and final offers.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear and understandable, but not concise. Sections A and B include redundant language and could be combined to address the procedure of all written revisions, including best and final offers.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-525. Evaluation of Proposal Offers

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding the criteria and procedures for evaluating best and final offers. It ensures that the procurement officer does not evaluate an offer on criteria other than that outlined in the request for proposals.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-526. Responsibility Determinations

2. <u>Objective and Effectiveness:</u>

The rule outlines the factors a procurement officer shall consider in determining whether an offeror is responsible or nonresponsible and explains how the procurement officer should notify the offeror if the offeror is determined to be nonresponsible. It protects the Lottery interests by ensuring that only responsible offerors are awarded contracts and informs interested parties regarding the specific factors the procurement officer evaluates to make a responsible or nonresponsible determination.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is generally clear, concise and understandable. But the first sentence in section C could be reworded to be clearer and more understandable. Specifically, it should be reworded as follows: "If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly notify the offeror, in writing, of the final determination that the offeror is nonresponsive, except when notification to the offeror would compromise the Lottery's ability to negotiate with other offerors."

8. <u>Previous five-year-review:</u>

There was no proposed course of action

R19-3-527. Bid Contract Award

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding awarding a bid contract to an offeror and outlines the documentation the procurement officer must make regarding the award. It ensures consistency and fairness in making bid contract awards and informs interested parties regarding the criteria and procedure for awarding a bid contract.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-528. Proposal Contract Award

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding awarding a proposal contract to an offeror and outlines the procedure for obtaining Lottery Commission approval. It ensures consistency and fairness in making proposal contract awards and informs interested parties regarding the criteria and procedure for awarding a proposal contract.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended the rule to address the issues identified in the 2011 five-year-review.

R19-3-529. Mistakes Discovered After Bid Award

2. <u>Objective and Effectiveness:</u>

The rule outlines the procedures to follow when a mistake is discovered after a bid contract award. It provides information to offerors regarding how to request a correction, and it grants the procurement officer discretion to determine how to handle the mistake and the contract award so that Lottery's best interests are served in the contract award.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-530. Mistakes Discovered After Proposal Award

2. <u>Objective and Effectiveness:</u>

The rule outlines the procedures to follow when a mistake is discovered after a proposal contract award. It provides information to offerors regarding how to request a correction, and it grants the procurement officer discretion to determine how to handle the mistake and the contract award.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

2. Objective and Effectiveness:

The rule requires the procurement officer to issue a request for quotation for purchases less than the amount specified in A.R.S. § 41-2535 unless certain circumstances apply. The rule ensures that the request for quotation process will be followed for purchases between $10,000 and $100,000 unless the purchase can be made from a state or agency contract, a set-aside organization or competition is impracticable.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable. However, there is some duplication of language with R19-3-532 and the rule refers to R19-3-532. The rule could be eliminated and its language incorporated into section A of R19-3-532. The remaining sections of R19-3-532 could be renumbered.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-532. Solicitation – Request for Quotation

2. <u>Objective and Effectiveness:</u>

This rule outlines the requirements the procurement officer must include in a solicitation for purchases exceeding $10,000 but less than the amount specified in A.R.S. § 41-2535. The rule ensures that the solicitation requirements are clear to interested parties and that the Lottery is complying with state law requiring purchases or contracts to be awarded to small businesses if practicable.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise, and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended the rule to incorporate the changes recommended in the 2011 five-year-review.

R19-3-534. Quotation Contract Award

2. Objective and Effectiveness:

The rule outlines procedures for the procurement officer to follow when awarding a quotation contract. It outlines a procedure for the Lottery to follow in the event only one responsive offer is received.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The Lottery amended the rule to address the issues identified in the 2011 five-year-review.

R19-3-535. Sole Source Procurements

2. <u>Objective and Effectiveness:</u>

The rule provides direction to the procurement officer regarding the circumstances under which a sole source procurement is appropriate and outlines procedures for sole source procurements. It permits the Lottery to procure a material or service without a competitive process when there is only a single source or no reasonable source exists.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-536. Emergency Procurements

2. <u>Objective and Effectiveness:</u>

The rule permits the Lottery to proceed with an emergency procurement when the procurement is estimated to exceed the amount specified in A.R.S. § 41-2535 and defines the conditions that must be met to justify an emergency procurement. It permits the Lottery to procure materials or services when there is an immediate and serious need because of a serious threat to the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rules is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-537. Competition Impracticable Procurements

2. <u>Objective and Effectiveness:</u>

The rule authorizes the Lottery to procure goods or services outside of the typical solicitation process when competition is impracticable because of an unusual or unique situation or a lack of available vendors.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended the rule to incorporate the change recommended in the 2011 five-year-review.

R19-3-538. Request for Information

2. <u>Objective and Effectiveness:</u>

The rule authorizes the procurement officer to issue a request for information for planning purposes and specifies that the responses are not offers and the time period that the information is confidential. The rule enables the Lottery to gather information in anticipation of a prospective procurement.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-539. Demonstration Projects

2. <u>Objective and Effectiveness:</u>

The rule authorizes the procurement officer to award contracts for demonstration projects and describes the requirements and procedures for demonstration projects. The rule is effective in providing the Lottery a means to explore a new product at no cost.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-540. General Services Administration Contracts

2. <u>Objective and Effectiveness:</u>

The rule outlines the conditions under which the procurement officer may purchase products or services using General Services Administration ("GSA") schedules or contracts. The rule ensures that GSA contracts are used only when it is in the Lottery's best interests.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-541. Contract Clauses

2. <u>Objective and Effectiveness:</u>

The rule directs the procurement officer to include all contract clauses necessary to ensure the Lottery's interests are addressed.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-542. Assignment of Rights and Duties

2. <u>Objective and Effectiveness:</u>

The rule prohibits a contractor from assigning or transferring a Lottery contract without the consent of the Director. The rule is effective in preventing a contractor from assigning transferring a contract when that assignment or transfer would not be advantageous to the Lottery or would be harmful to the Lottery's interests.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable. The rule could be eliminated by including similar language as a standard contract provision.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-543. Change of Name

2. <u>Objective and Effectiveness:</u>

The rule sets forth procedures to change a contractor's name on an existing Lottery contract. It allows the Lottery to make necessary changes when a contractor's business name is changed without affecting other contract terms and conditions.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules. The rule could be eliminated by including similar language as a standard contract term.

8. <u>Previous five-year-review:</u>

This rule was not in effect when the 2011 five-year-review was done.

R19-3-544. Contract Change Orders and Amendments

2. Objective:

The rule provides direction to the procurement officer regarding the procedures for executing change orders or amendments to existing contracts. The rule establishes a check and balance system for change orders that exceed 25% of the original contract amount, ensuring that monies are budgeted for the expense and that the change is advantageous to the Lottery.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-545. Multi-term Contracts

2. Objective and Effectiveness:

The rule sets the maximum contract term as five years, but gives the procurement officer the ability to exceed the time period under certain circumstances. It is effective because the Lottery is better able to maximize revenue and standardize its products and services by entering into long-term contracts with its ticket vendors.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action.

R19-3-546. Terms and Conditions

2. <u>Objective:</u>

This rule requires that uniform terms and conditions be used in Lottery contracts. It ensures consistency in contracts and reduces the possibility of negotiation that might negatively impact the Lottery's interests.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-547. Mandatory Statewide Contracts

2. <u>Objective and Effectiveness:</u>

The rule requires the Lottery to use existing Arizona state contracts for all non-Lottery specific materials and services. It ensures that the Lottery stays within its statutory exemption from the state procurement statutes and rules, and that resources are not wasted procuring materials and services that the state has already procured.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

This rule was not in effect when the 2011 five-year-review was done.

R19-3-548. Multiple Source Contracts

2. Objective and Effectiveness:

The rule is effective in limiting multiple award contracts to the least number of suppliers necessary to meet the Lottery's requirements.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The rule was not in effect when the 2011 five-year-review was done.

R19-3-549. Conflict of Interest

2. <u>Objective and Effectiveness:</u>

The rule allows the procurement officer to waive conflicts of interest of persons involved in the preparation of specifications, plans or scopes of work for a procurement. The rule is effective in ensuring that even when a person has a conflict of interest, he or she may be involved when it is determined to be in the Lottery's best interest.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rules is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

The rule was not in effect with the 2011 five-year-review was done.

R19-3-550. Determination of Fair and Reasonable Price

2. Objective and Effectiveness:

The rule outlines the requirements the procurement officer must use to determine whether a price is fair and reasonable for a contract or contract modification that exceeds $100,000. The rule is effective in ensuring that, for contracts involving a significant dollar amount, the Lottery obtains a fair and reasonable price based on competition or objective criteria.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-3-547.

R19-3-551. Submission and Certification of Cost or Pricing Data

2. <u>Objective and Effectiveness:</u>

The rule requires that offerors submit certified cost or pricing data as specified by the procurement officer and keep all data submitted current until negotiations are concluded. The rule is effective in ensuring that the Lottery has current information during negotiations.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action. The rule was previously R19-3-548.

R19-3-552 Refusal to Submit Cost or Pricing Data

2. Objective and Effectiveness:

The rule outlines the actions the procurement officer may take if an offeror or contractor fails to submit cost or pricing data. It is effective in reducing costs by allowing the procurement officer to reject the proposed offer or contract modification.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-3-549.

R19-3-553. Defective Cost or Pricing Data

2. <u>Objective and Effectiveness:</u>

The rule sets forth the procedure for the procurement officer to determine that cost or pricing data is defective and for an offeror or contractor to appeal the procurement officer's determination. It is effective in ensuring lowest cost for the Lottery by allowing an adjustment where pricing data was effective.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action. The rule was previously R19-3-550.

R19-3-554. Protest of Solicitations and Contract Awards

2. Objective:

The rule outlines the requirements and procedures for an interested party to file a protest of a solicitation, a determination of not susceptible for award, or the award of a contract. The rule is effective in informing interested parties of the rights and the procedures for filing a protest.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise, and understandable.

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-553.

R19-3-555. Stay of Procurements During the Protest

2. <u>Objective:</u>

The rule outlines the procurement officer's options and obligations when a protest if filed before a solicitation due date, before contract award, or before contract performance has begun. It also provides notice to protesters that they may request a stay from the Director if denied by the procurement officer.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action. This rule was previously R19-3-552.

R19-3-556. Resolution of Solicitation and Contract Award Protests

2. <u>Objective:</u>

The rule establishes the procurement officer's authority to resolve a protest and provides guidelines for issuing a written decision regarding a protest. It effectively outlines the procurement officer's required actions and provides information regarding the interested party's rights.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action. This rule was previously R19-3-553.

R19-3-557. Remedies by the Procurement Officer

2. Objective:

The rule authorizes the procurement officer to implement an appropriate remedy if a protest is sustained, outlines the factors to consider in determining the remedy, and describes the remedies that may be implemented. It is effective in providing information about appropriate remedies to the procurement officer and interested parties.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. This rule was previously R19-3-554.

R19-3-558. Appeals to the Director Regarding Protest Decision

2. <u>Objective and Effectiveness:</u>

The rule provides direction to interested parties regarding the process and time frame for appealing the procurement officer's decision on a protest. It is effective in outlining the requirements for an appeal.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is generally clear, concise and understandable. Section A could be made clearer. It refers to "the decision entered or deemed to be entered by the procurement officer" and "the date the decision is received or deemed received under R19-3-556." Including a reference to R19-3-556(E) would make it clearer that "deemed to be entered" and "deemed received" refers to the situation where the procurement officer fails to issue a timely decision.

8. <u>Previous five-year-review:</u>

The 2011 five-year-review recommended that R19-3-559 Appeals and Reports to the Director be separated into two rules, one for protest procedures and one for contract claim procedures. The rules were amended to adopt this recommendation.

R19-3-559. Notice of Appeal to the Director Regarding Protests

2. <u>Objective and Effectiveness:</u>

The rule requires that the procurement officer promptly give notice of an appeal to all offerors. It ensures that all offerors know that an appeal has been filed and allows offerors to request a copy of the appeal.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-560. Stay of Procurement During Appeal to Director

2. <u>Objective and Effectiveness:</u>

The rule effectively provides direction to interested parties regarding the impact of filing an appeal during a stay of procurement under R19-3-555.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

This rule is concise and understandable. It could be made clearer by incorporating it into R19-3-555 so that only one rule addresses stays.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-561. Agency Report Regarding Protest Appeals

2. <u>Objective and Effectiveness:</u>

The rule outlines the time limit for and required contents of the procurement officer's agency report on an appeal. It also provides direction to interested parties regarding the process to file comments. It is effective in providing direction to the procurement officer and interested parties regarding the protest appeal process.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended and reordered the rule to incorporate the changes recommended in the 2011 five-year-review. This rule was previously R19-3-555.

R19-3-562. Remedies by the Director

2. <u>Objective and Effectiveness:</u>

The rule outlines the remedies that may be imposed when the Director sustains an appeal in whole or part. It is effective in providing notice of potential remedies to interested parties.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

R19-3-563. Informal Settlement Conference

2. <u>Objective and Effectiveness:</u>

The rule sets forth the procedure to be followed in setting and holding an informal settlement conference and the documentation required in the event a settlement agreement is reached. It is an effective method to shorten the dispute resolution process and allow disputes to be settled informally.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

The rule did not exist during the 2011 five-year-review.

R19-3-564. Dismissal Before Hearing

2. Objective and Effectiveness:

The rule provides direction to the Lottery Director regarding the circumstances under which he can dismiss an appeal. The rule is effective in outlining the Director's authority and in giving notice to claimants regarding the basis for dismissal of an appeal.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

The rule did not exist during the 2011 five-year-review.

R19-3-565. Controversies Involving Contract Claims Against the Lottery

2. Objective:

The rule outlines the time frame and requirements for a claimant to file a contract claim with the procurement officer. It is effective in providing direction to claimants regarding the procedure to resolve a claim.

4. Consistency with statutes and rules:

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. Clarity, conciseness and understandability:

The rule is clear, concise and understandable.

8. Previous five-year-review:

There was no proposed course of action. The rule was previously R19-2-556.

R19-3-566. Procurement Officer's Decision Regarding Contract Claims

2. <u>Objective and Effectiveness:</u>

This rule outlines the requirements and procedures regarding the procurement officer's decision on a contract claim. It is effective in providing guidance to the procurement officer.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended the rule to incorporate the change recommended in the 2011 five-year-review. The rule was previously R19-3-557.

R19-3-567. Appeals and Reports to the Director Regarding Contract Claims

2. <u>Objective and Effectiveness:</u>

The rule provides direction to claimants regarding the procedures for appealing a final procurement decision. It also outlines what actions the procurement officer must take after an appeal is filed. It is effective in giving guidance to claimants and the procurement officer regarding the appeals process.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

The Lottery amended the rule to incorporate the changes recommended in the 2011 five-year-review. Specifically, the 2011 five-year-review recommended that **R19-3-559 Appeals and Reports to the Director** be separated into two rules, one for protest procedures and one for contract claim procedures.

R19-3-568. Controversies Involving Lottery Claims Against the Contractor

2. <u>Objective and Effectiveness:</u>

The rule directs the procurement officer to seek resolution under A.R.S. § 41-1092.07 when the procurement officer is unable to resolve a claim against the Lottery by mutual agreement. It is effective in giving guidance to the procurement officer regarding available remedies.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is generally clear, concise and understandable, but it should refer to A.R.S. § 41-1092.02

8. <u>Previous five-year-review:</u>

There was no proposed course of action. This rule was previously R19-3-560 and has been renumbered since the 2011 five-year-review.

R19-3-569. Guidance

2. <u>Objective and Effectiveness:</u>

The rule allows the procurement officer to use state procurement statutes and rules as guidance in written determinations where the Lottery procurement rules do not address the procedure.

4. <u>Consistency with statutes and rules:</u>

The rule is consistent with Lottery statutes, and state procurement statutes and rules.

5. <u>Clarity, conciseness and understandability:</u>

The rule is clear, concise and understandable.

8. <u>Previous five-year-review:</u>

There was no proposed course of action.

Arizona State Lottery Commission

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING
CHAPTER 3. ARIZONA STATE LOTTERY COMMISSION
ARTICLE 5. PROCUREMENTS

R19-3-501. Definitions

In this Article, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
3. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
4. "Best interests of the Lottery" means advantageous to the Lottery.
5. "Bid" means an offer in response to solicitation.
6. "Business" means a corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or other private legal entity.
7. "Change order" means a written order that is signed by the procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
8. "Contract" means an agreement, regardless of what it is called, for the procurement of Lottery equipment, tickets, and related materials.
9. "Contract amendment" means a written alteration in the terms or conditions of a contract accomplished by mutual action of the parties to the contract or a unilateral exercise of a right contained in the contract.
10. "Contractor" means a person who has a contract with the Lottery.
11. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or are expected to be incurred by the contractor in performing the contract.
12. "Cost-plus-a-percentage-of-cost-contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
13. "Cost reimbursement contract" means a contract under which a contractor is reimbursed for costs that are reasonable, allowable, and allocable in accordance with the contract terms and the provisions of this Article, and a fee, if provided for in the contract.
14. "Day" means a calendar day and is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
15. "Defective data" means data that is inaccurate, incomplete, or outdated.
16. "Director" means the Executive Director of the State Lottery.
17. "Discussions" means oral or written negotiation between the Lottery and an offeror during which information is exchanged about specifications, scope of work, terms and conditions, and price included in an initial proposal. Communication with an offeror for the sole purpose of clarification does not constitute "discussions."
18. "Filed" means delivered to the procurement officer or to the Director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
19. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, bylaws, or similar documents.
20. "Interested party" means an offeror or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a solicitation, the award of a contract, or by the failure to award a contract. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
21. "Invitation for bids" means all documents, whether attached or incorporated by reference, that are used to solicit bids in accordance with R19-3-508.
22. "Minor informality" means any mistake, excluding a judgmental error, that has negligible effect on price, quantity, quality, delivery, or other contractual terms and the waiver or correction of which does not prejudice other bidders or offerors.
23. "Multiple award" means a grant of an indefinite quantity contract for one or more similar materials or services to more than one bidder or offeror.
24. "Multi-step sealed bidding" means a two-phase bidding process consisting of a technical phase and a price phase.
25. "Negotiation" means an exchange or series of exchanges, including a request for a best and final offer, between the Lottery and an offeror or contractor that allows the Lottery or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by these rules or statutes.
26. "Offer" means a response to a solicitation.
27. "Offeror" means a person who responds to a solicitation.
28. "Person" means any corporation, limited liability company, limited liability partnership, partnership, business, individual, union, committee, club, other organization, or group of individuals.
29. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
30. "Procurement" means all functions that pertain to obtaining any materials or services for the design or operation of a Lottery game or the purchase of Lottery equipment, tickets, and related materials.

31. "Procurement file" means the official records file of the Lottery. The procurement file shall include (electronic or paper) the following:
    a. List of notified vendors;
    b. Final solicitation;
    c. Solicitation amendments;
    d. Bids and offers;
    e. Offer revisions and best and final offers;
    f. Discussions;
    g. Clarifications;
    h. Final evaluation reports; and
    i. Additional information, if requested by the procurement officer.
32. "Proposal" means an offer submitted in response to a solicitation.
33. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
34. "Purchase description" means the words used in a solicitation to describe Lottery materials to be procured and includes specifications attached to, or made a part of, the solicitation.
35. "Purchase request" or "purchase requisition" means a document or electronic transmission in which the Director requests that a contract be entered into for a specific need and may include a description of a requested item, delivery schedule, transportation data, criteria for evaluation, suggested sources of supply, and information needed to make a written determination required by this Article.
36. "Request for proposals" means all documents, whether attached or incorporated by reference, that are used to solicit proposals in accordance with R19-3-509.
37. "Responsible bidder or offeror" means a person who has the capability to perform contract requirements and the integrity and reliability necessary to ensure a good faith performance.
38. "Responsive bidder or offeror" means a person who submits a bid that conforms in all material respects to the invitation for bids or request for proposals.
39. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
40. "Services" means the labor, time, or effort furnished by a contractor with no expectation that a specific end product other than required reports and performance will be delivered. Services does not include employment agreements or collective bargaining agreements.
41. "Significant procurement role":
    a. Means any role that includes any of the following duties:
        i. Participating in the development of a procurement.
        ii. Participating in the development of an evaluation tool.
        iii. Approving a procurement or an evaluation tool.
        iv. Soliciting quotes greater than ten thousand dollars for the provision of materials or services.
        v. Serving as a technical advisor or an evaluator who evaluates a procurement.
        vi. Recommending or selecting a vendor that will provide materials or services to the Lottery.
        vii. Serving as a decision maker or designee on a protest or an appeal by a party regarding a Lottery procurement selection or decision.
    b. Does not include making a decision on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the Lottery as applied to the project, services, goods, or materials.
42. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than four million dollars for the last complete fiscal year.
43. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the Lottery to invite a person to submit an offer.
44. "Specification" means a description of the physical or functional characteristics, or of the nature of a Lottery material or service. Specification includes a description of any requirement for inspecting, testing, or preparing a Lottery material for delivery.
45. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the Lottery.
46. "Suspension" means an action taken by the Director of the Department of Administration under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
47. "Technical offer" means unpriced written information from a prospective contractor stating the manner in which the prospective contractor intends to perform certain work, its qualifications, and its terms and conditions.
48. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-501 repealed, new Section R4-37-501 renumbered

from R4-37-502 and amended effective May 7, 1990 (Supp. 90-2). R19-3-501 recodified from R4-37-501 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-502. Written Determination

A. If a written determination is required under applicable law, the procurement officer shall include the basis for the action taken in the written determination.

B. The procurement officer shall place the written determination into the Lottery's procurement file.

C. A procurement file is considered the official records file of the Lottery.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-502 renumbered to R4-37-501, new Section R4-37-502 renumbered from R19-3-503 and amended effective May 7, 1990 (Supp. 90-2). R19-3-502 recodified from R4-37-502 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-503. Confidential Information

A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate the beginning and end of any information that is designated a trade secret or other proprietary information, using the term "confidential." Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.

B. Until a final determination is made under subsection (D), the procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by the procurement officer to have a legitimate Lottery interest.

C. Upon protest to a confidential submission, the procurement officer shall request that the offeror and protester submit factual and legal comments on the issue by a date certain.

D. After reviewing the statements or expiration of the time to comment, or both, the procurement officer shall make a determination that:

1. The designated information is confidential and the procurement officer shall not disclose the information except to those individuals deemed by the procurement officer to have a legitimate Lottery interest,
2. The designated information is not confidential, or
3. Additional information is required before a final confidentiality determination can be made.

E. If the procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination. The procedures and requirements for review in A.R.S. Title 41, Chapter 6, Article 10 apply to such a review by the Director.

F. The procurement officer may release information designated as confidential under subsection (A) if:

1. A request for review is not received by the procurement officer within the time period specified in the notice; or
2. The Director, after review of the recommended findings of fact and conclusions of law, makes a written determination that the designated information is not confidential.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-503 renumbered to R4-37-502, new Section R4-37-503 renumbered from R19-3-504 and amended effective May 7, 1990 (Supp. 90-2). R19-3-503 recodified from R4-37-503 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-504. General Provisions

A. A person that participates in any aspect of a specific procurement as an advisor to the Lottery shall not receive any direct or indirect benefit from a contract for the procurement.

B. The Director shall not pay for any material or service unless fully approved.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-504 renumbered to R4-37-503, new Section R4-37-504 renumbered from R4-37-505 and amended effective May 7, 1990 (Supp. 90-2). R19-3-504 recodified from R4-37-504 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Amended by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-505. Prospective Suppliers List

A. The procurement officer may refer to a prospective suppliers list maintained by the state procurement administrator as a resource for selection of suppliers.

B. The procurement officer may choose to compile and maintain a Lottery prospective suppliers list as a resource for selection of suppliers.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-505 renumbered to R4-37-504, new Section R19-3-505 renumbered from R4-37-507 and amended effective May 7, 1990 (Supp. 90-2). R19-3-505 recodified from R4-37-505 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-506. Source Selection Method: Determination Factors

A. The procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent A.R.S. §§ 5-559 and 41-2501(G).

B. If the procurement officer believes that an existing Arizona state contract is sufficient to satisfy the Lottery's requirements, the procurement officer may procure those materials and services covered by such contracts.

C. The procurement officer shall not award a contract or incur an obligation on behalf of the Lottery unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-506 repealed, new Section R4-37-506 renumbered from R4-37-508 and amended effective May 7, 1990 (Supp. 90-2). R19-3-506 recodified from R4-37-506 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the first A.R.S. citation in subsection (A) was updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-507. Solicitation

A. The procurement officer shall issue a solicitation at least 14 days before the offer due date and time, unless the procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the procurement officer shall document the specific reasons in the procurement file.

B. The procurement officer shall:

1. Advertise the procurement not less than two weeks before offer due date at least one time in a newspaper of general circulation and place the notice on the Lottery web site; and
2. At a minimum, provide written notice to the prospective suppliers that have registered with the Lottery's procurement officer for the specific material, service, or construction solicited.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-507 renumbered to R4-37-505, new Section R4-37-507 renumbered from R4-37-509 and amended effective May 7, 1990 (Supp. 90-2). R19-3-507 recodified from R4-37-507 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-508. Bid Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instruction to offerors, including:
   a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
   b. The deadline date for requesting a substitution or exception to the solicitation;
   c. The manner by which the offeror is required to acknowledge amendments;
   d. The minimum required information in the offer;
   e. The specific requirements for designating trade secrets and other proprietary information as confidential;
   f. Any specific responsibility criteria;
   g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
   h. Any evaluation criteria;
   i. A statement of where documents incorporated by reference are available for inspection and copying;
   j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
   k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;

l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
n. Any bid security required;
o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
q. Any other offer submission requirements;

2. Specifications, including:
   a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
   c. Any other specification requirements;
3. Terms and Conditions, including:
   a. Whether the contract will include an option for extension, and
   b. Any other contract terms and conditions.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-508 renumbered to R4-37-506, new Section R4-37-508 renumbered from R4-37-510 and amended effective May 7, 1990 (Supp. 90-2). R19-3-508 recodified from R4-37-508 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-509. Request for Proposal Solicitation Requirements

The procurement officer shall include the following in the solicitation:

1. Instructions to offerors, including:
   a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
   b. The deadline date for requesting a substitution or exception to the solicitation;
   c. The manner by which the offeror is required to acknowledge amendments;
   d. The minimum information required in the offer;
   e. The specific requirements for designating trade secrets and other proprietary information as confidential;
   f. Any specific responsibility or susceptibility criteria;
   g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
   h. Evaluation factors and the relative order of importance;
   i. A statement of where documents incorporated by reference are available for inspection and copying;
   j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
   k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
   l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
   m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
   n. Any offer security required;
   o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
   p. Any cost or pricing data required;
   q. The type of contract to be used;
   r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
   s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
   a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
   b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
   c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
   a. Whether the contract is to include an extension option, and

b. Any other contract terms and conditions.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-509 renumbered to R4-37-507, new Section R4-37-509 renumbered from R4-37-512 and amended effective May 7, 1990 (Supp. 90-2). R19-3-509 recodified from R4-37-509 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-510. Pre-Offer Conferences

The procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted for a solicitation, it shall be within a reasonable time prior to the offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R19-3-511.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-510 renumbered to R4-37-508, new Section R4-37-510 renumbered from R4-37-513 and amended effective May 7, 1990 (Supp. 90-2). R19-3-510 recodified from R4-37-510 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-511. Solicitation Amendment

A. The procurement officer shall issue a solicitation amendment to do any or all of the following:
1. Make changes in the solicitation,
2. Correct defects or ambiguities,
3. Provide additional information or instructions, or
4. Extend the offer due date and time if the procurement officer determines that an extension is in the best interest of the Lottery.

B. If a solicitation is changed by a solicitation amendment, the procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.

C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-511 repealed, new Section R4-37-511 renumbered from R4-37-514 and amended effective May 7, 1990 (Supp. 90-2). R19-3-511 recodified from R4-37-511 (Supp. 95-1). Former Section R19-3-511 renumbered to R19-3-513 and amended; new Section R19-3-511 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-512. Modification or Withdrawal of Offer Before Offer Due Date and Time

A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.

B. The procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-512 renumbered to R4-37-509, new Section R4-37-512 renumbered from R4-37-515 and amended effective May 7, 1990 (Supp. 90-2). R19-3-512 recodified from R4-37-512 (Supp. 95-1). Former Section R19-3-512 renumbered to R19-3-514 and amended; new Section R19-3-512 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-513. Cancellation of a Solicitation Before Offer Due Date and Time

A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation before the offer due date and time.

B. The procurement officer shall notify suppliers to whom the procurement officer distributed the solicitation.

C. The procurement officer shall not open offers after cancellation. The procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-513 renumbered to R4-37-510, new Section R4-37-513 renumbered from R19-3-516 and amended effective May 7, 1990 (Supp. 90-2). R19-3-513 recodified from R4-37-513

(Supp. 95-1). Former Section R19-3-513 renumbered to R19-3-515 and amended; new Section R19-3-513 renumbered from R19-3-511 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-514. Receipt, Opening, and Recording of Offers

A. The procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The procurement officer shall store each unopened offer in a secure place until the offer due date and time.

B. The Lottery may open an offer to identify the offeror. If this occurs, the procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The procurement officer shall secure the offer and retain it for public opening.

C. For a bid solicitation, the procurement officer shall open offers after the offer due date and time. The procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.

D. For a proposal solicitation, the procurement officer shall open offers after the offer due date and time. The procurement officer shall record the name of each offeror and any other relevant information as determined by the procurement officer. The procurement officer shall make the record of offers available for public viewing.

E. Except for the information identified in subsections (C) and (D), the procurement officer shall ensure that information contained in the offer remains confidential until the contract becomes effective and binding and is shown only to those persons assisting in the evaluation process and the Lottery Commissioners, after award, and before the contract becomes effective and binding.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-514 renumbered to R4-37-511, new Section R4-37-514 renumbered from R4-37-517 and amended effective May 7, 1990 (Supp. 90-2). R19-3-514 recodified from R4-37-514 (Supp. 95-1). Former Section R19-3-514 renumbered to R19-3-516 and amended; new Section R19-3-514 renumbered from R19-3-512 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-515. Late Offers, Modifications, Withdrawals

A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, the procurement officer shall determine the offer, modification, or withdrawal as late.

B. The procurement officer shall reject a late offer, modification, or withdrawal unless:

1. The document is received before the contract award at the location designated in the solicitation; and
2. The document would have been received by the offer due date and time, but for the action or inaction of Lottery personnel.

C. Upon receiving a late offer, modification, or withdrawal, the procurement officer shall:

1. If the document is hand delivered, refuse to accept delivery; or
2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.

D. The procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-515 renumbered to R4-37-512, new Section R4-37-515 renumbered from R4-37-518 and amended effective May 7, 1990 (Supp. 90-2). R19-3-515 recodified from R4-37-515 (Supp. 95-1). Amended effective December 16, 1997 (Supp. 97-4). Former Section R19-3-515 renumbered to R19-3-517 and amended; new Section R19-3-515 renumbered from R19-3-513 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-516. Cancellation of Solicitation After Receipt of Offers and Before Award

A. Based on the best interest of the Lottery, the procurement officer may cancel a solicitation after offer due date and time. The procurement officer shall prepare a written justification for cancellation and place it in the procurement file.

B. The procurement officer shall notify offerors of the cancellation in writing.

C. The procurement officer shall retain offers received under the cancelled solicitation in the procurement file. If the Lottery intends to issue another solicitation within six months after cancellation of the procurement, the procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the procurement officer shall make offers submitted in response to the cancelled solicitation available for public inspection except for information determined to be confidential pursuant to R19-3-503.

D. In the event of cancellation, the procurement officer shall promptly return any bid security provided by an offeror.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a

permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-516 renumbered to R4-37-513, new Section R4-37-516 renumbered from R4-37-519 and amended effective May 7, 1990 (Supp. 90-2). R19-3-516 recodified from R4-37-516 (Supp. 95-1). Former Section R19-3-516 renumbered to R19-3-518 and amended; new Section R19-3-516 renumbered from R19-3-514 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-517. One Offer Received

A. If only one offer is received in response to a solicitation, the procurement officer shall review the offer and either:
1. Award the contract to the offeror and prepare a written determination that:
   a. The price submitted is fair and reasonable under R19-3-550,
   b. The offer is responsive, and
   c. The offeror is responsible, or
2. Reject the offer and:
   a. Resolicit for new offers,
   b. Cancel the procurement, or
   c. Use a different source selection method authorized under these rules.

B. If the procurement officer awards a contract for a solicitation under (A)(1), the award shall comply with R19-3-527 for a bid solicitation and R19-3-528 for a proposal solicitation.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-517 renumbered to R4-37-514, new Section R4-37-517 renumbered from R4-37-520 and amended effective May 7, 1990 (Supp. 90-2). R19-3-517 recodified from R4-37-517 (Supp. 95-1). Former Section R19-3-517 renumbered to R19-3-519 and amended; new Section R19-3-517 renumbered from R19-3-515 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-518. Offer Mistakes Discovered After Offer Opening and Before Award

A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, the procurement officer shall contact the offeror for written confirmation of the offer. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include all of the following in a written response:
   a. Explanation of the mistake and any other relevant information,
   b. A request for correction including the corrected offer or a request for withdrawal, and
   c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

C. The procurement officer may permit an offeror to correct a mistake if the mistake involves a minor informality or if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The procurement officer shall not permit a correction that is prejudicial to the Lottery or fair competition.

D. The procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.

E. The procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the Lottery.

F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-518 renumbered to R4-37-515, new Section R4-37-518 renumbered from R4-37-521 and amended effective May 7, 1990 (Supp. 90-2). R19-3-518 recodified from R4-37-518 (Supp. 95-1). Former Section R19-3-518 renumbered to R19-3-520 and amended; new Section R19-3-518 renumbered from R19-3-516 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-519. Extension of Offer Acceptance Period

A. To extend the offer acceptance period, the procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.

B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-519 renumbered to R4-37-516, new Section R4-37-519 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-519 recodified from R4-37-519 (Supp. 95-1). Former Section R19-3-519 renumbered to R19-3-521 and amended; new Section R19-3-519 renumbered from R19-3-517 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-520. Determination of Not Susceptible for Award

A. The procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The procurement officer shall place a written determination, based on one or more of the following, in the procurement file:

1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
3. The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration.

B. The procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award, unless the procurement officer determines notification to the offeror would compromise the Lottery's ability to negotiate with other offerors.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-520 renumbered to R4-37-517, new Section R4-37-520 renumbered from R4-37-523 and amended effective May 7, 1990 (Supp. 90-2). R19-3-520 recodified from R4-37-520 (Supp. 95-1). Former Section R19-3-520 renumbered to R19-3-522 and amended; new Section R19-3-520 renumbered from R19-3-518 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-521. Bid Evaluation

A. The procurement officer shall evaluate offers to determine which offer provides the lowest cost to the Lottery in accordance with any objectively measurable factors set forth in the solicitation.

B. The procurement officer may consider life cycle costs and application benefits when evaluating offers for the procurement of materials.

C. The procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.

D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the procurement officer shall make the award by drawing lots. If time permits, the procurement officer shall provide the offerors involved an opportunity to attend the drawing. The procurement officer shall ensure that the drawing is witnessed by at least one person other than the procurement officer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-521 renumbered to R4-37-518, new Section R4-37-521 renumbered from R4-37-524 and amended effective May 7, 1990 (Supp. 90-2). R19-3-521 recodified from R4-37-521 (Supp. 95-1). Former Section R19-3-521 renumbered to R19-3-523 and amended; new Section R19-3-521 renumbered from R19-3-519 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-522. Clarification of Proposal Offers

A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.

B. The procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.

C. The procurement officer shall retain any clarifications in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-522 renumbered to R4-37-519, new Section R4-37-522 renumbered from R4-37-525 and amended effective May 7, 1990 (Supp. 90-2). R19-3-522 recodified from R4-37-522

(Supp. 95-1). Former Section R19-3-522 renumbered to R19-3-524 and amended; new Section R19-3-522 renumbered from R19-3-520 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-523. Proposal Negotiations with Responsible Offerors and Revisions of Offers

A. The procurement officer shall establish procedures and schedules for conducting negotiations. The procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.

B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the procurement officer shall confirm the negotiations in writing and provide the document to the offeror.

C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.

D. The procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the Lottery based on the requirements and the evaluation factors set forth in the solicitation.

E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.

F. An offeror may withdraw an offer at any time before the best and final offer due date and time by submitting a written request to the procurement officer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-523 renumbered to R4-37-520, new Section R4-37-523 renumbered from R4-37-526 and amended effective May 7, 1990 (Supp. 90-2). R19-3-523 recodified from R4-37-523 (Supp. 95-1). Former Section R19-3-523 renumbered to R19-3-525 and amended; new Section R19-3-523 renumbered from R19-3-521 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-524. Offer Revisions and Best and Final Offers

A. The procurement officer may request written revisions to an offer. The procurement officer shall include in the written request:
1. The date, time, and place for submission of offer revisions; and
2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.

B. The procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted, however it is not mandatory to conduct negotiations prior to requesting a best and final offer. The procurement officer shall include in the written request:
1. The date, time, and place for submission of best and final offer; and
2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.

C. The procurement officer shall request written best and final offers only once, unless the procurement officer makes a written determination that it is advantageous to the Lottery to conduct further negotiations or change the Lottery's requirements.

D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the procurement officer shall contact the offeror for written confirmation. The procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
2. Acknowledge that a mistake was made, and include the following in a written response:
   a. Explanation of the mistake and any other relevant information,
   b. A request for correction including the corrected offer or a request for withdrawal, and
   c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

E. An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

F. In response to a request made under subsections (D) or (E), the procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the Lottery. If an offeror does not provide written confirmation of the best and final offer, the procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-524 renumbered to R4-37-521, new Section R4-37-524 renumbered from R4-37-527 and amended effective May 7, 1990 (Supp. 90-2). R19-3-524 recodified from R4-37-524

(Supp. 95-1). Former Section R19-3-524 renumbered to R19-3-526 and amended; new Section R19-3-524 renumbered from R19-3-522 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-525. Evaluation of Proposal Offers

A. The procurement officer shall evaluate offers and best and final offers based on the evaluation criteria contained in the request for proposals. The procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.

B. The procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the procurement officer. This evaluation report shall supersede all previous draft evaluations or evaluation reports. The procurement officer may:

1. Accept or reject the findings of the evaluation committee,
2. Request additional information from the evaluation committee, or
3. Replace the evaluation committee.

C. The procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-525 renumbered to R4-37-522, new Section R4-37-525 renumbered from R4-37-522 and amended effective May 7, 1990 (Supp. 90-2). R19-3-525 recodified from R4-37-525 (Supp. 95-1). Former Section R19-3-525 renumbered to R19-3-527 and amended; new Section R19-3-525 renumbered from R19-3-523 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-526. Responsibility Determinations

A. The procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.

B. The procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:

1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
2. The offeror's record of performance and integrity;
3. Whether the offeror has been debarred or suspended;
4. Whether the offeror is legally qualified to contract with the Lottery;
5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
6. Whether the offeror meets the responsibility criteria specified in the solicitation.

C. If the procurement officer determines an offeror is nonresponsible, the procurement officer shall promptly send a determination to the offeror stating the basis for the determination, except when notification to the offeror would compromise the Lottery's ability to negotiate with other offerors. The procurement officer shall file a copy of the determination in the procurement file.

D. The procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.

E. For the offeror awarded a contract, the procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-526 renumbered to R4-37-523, new Section R4-37-526 renumbered from R4-37-529 and amended effective May 7, 1990 (Supp. 90-2). R19-3-526 recodified from R4-37-526 (Supp. 95-1). Former Section R19-3-526 renumbered to R19-3-528 and amended; new Section R19-3-526 renumbered from R19-3-524 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-527. Bid Contract Award

A. The procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.

B. The procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. After an award becomes effective and binding, the procurement officer shall return any bid security provided by the offeror.

E. Within three days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-527 renumbered to R4-37-524, new Section R4-37-527 renumbered from R4-37-530 effective May 7, 1990 (Supp. 90-2). R19-3-527 recodified from R4-37-527 (Supp. 95-1). Former Section R19-3-527 renumbered to R19-3-529 and amended; new Section R19-3-527 renumbered from R19-3-525 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-528. Proposal Contract Award

A. The procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the Lottery based on the evaluation factors set forth in the solicitation. The procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.

B. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

C. If the procurement officer makes a written determination that it is in the best interest of the Lottery that the award not be made public until reviewed by the Lottery Commission, the Director may authorize a meeting of the Lottery Commission to be held for consideration of the award.

1. The Director shall provide notice of the meeting in compliance with Open Meeting Law, including notice of an executive session to provide information concerning the award and the procurement officer's evaluation of the offers.
2. The Lottery Commission shall not take action in the executive session.
3. In open meeting the Lottery Commission may vote to approve or reject the award. The Lottery Commission may also direct that it will reject the award unless further negotiations occur regarding specified issues. If further negotiations are directed, the procurement officer shall withhold the recommended award from public inspection.

D. The procurement officer shall notify all offerors of an award that has become effective and binding.

E. After an award becomes effective and binding, the procurement officer shall return any offer security provided by the offeror.

F. Within three days after an award is effective and binding, the procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R19-3-503.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-528 renumbered to R4-37-525, new Section R4-37-528 renumbered from R4-37-531 and amended effective May 7, 1990 (Supp. 90-2). R19-3-528 recodified from R4-37-528 (Supp. 95-1). Former Section R19-3-528 renumbered to R19-3-530 and amended; new Section R19-3-528 renumbered from R19-3-526 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-529. Mistakes Discovered After Bid Award

A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:

1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:

1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
2. Cancel all or part of the award; or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, based on the considerations of fair competition and the best interest of the Lottery.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-529 renumbered to R4-37-526, new Section R4-37-529 renumbered from R4-37-532 and amended effective May 7, 1990 (Supp. 90-2). R19-3-529 recodified from R4-37-529 (Supp. 95-1). Former Section R19-3-529 renumbered to R19-3-531 and amended; new Section R19-3-529 renumbered from R19-3-527 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-530. Mistakes Discovered After Proposal Award

A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information,
2. A request for correction including the corrected offer or a request for withdrawal, and
3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the Lottery.

B. Based on the considerations of fair competition and the best interest of the Lottery, the procurement officer may:
1. Allow correction of the mistake,
2. Cancel all or part of the award, or
3. Deny correction or withdrawal.

C. After cancellation of all or part of an award, if the offer acceptance period has not expired, the procurement officer may award all or part of the contract to the next responsible offeror whose offer is determined to be the next most advantageous to the Lottery according to the evaluation factors contained in the solicitation.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-530 renumbered to R4-37-527, new Section R4-37-530 renumbered from R4-37-533 and amended effective May 7, 1990 (Supp. 90-2). R19-3-530 recodified from R4-37-530 (Supp. 95-1). Former Section R19-3-530 renumbered to R19-3-533 and amended; new Section R19-3-530 renumbered from R19-3-528 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-531. Procurements not Exceeding the Amount Prescribed in A.R.S. § 41-2535

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, the procurement officer shall issue a request for quotation under R19-3-532 unless any of the following apply:
1. The purchase can be made from a state or agency contract,
2. The purchase can be made from a set-aside organization as established in A.R.S. § 41-2636,
3. The purchase is not expected to exceed $10,000.00, or
4. The procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-531 renumbered to R4-37-528, new Section R4-37-531 renumbered from R4-37-534 and amended effective May 7, 1990 (Supp. 90-2). R19-3-531 recodified from R4-37-531 (Supp. 95-1). Former Section R19-3-531 renumbered to R19-3-535 and amended; new Section R19-3-531 renumbered from R19-3-529 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-532. Solicitation – Request for Quotation

A. A request for quotation shall be issued for purchases estimated to exceed $10,000 but less than that specified in A.R.S. § 41-2535. The procurement officer shall include the following in the solicitation:
1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
3. The minimum information that the offer shall contain;
4. Any evaluation factors;
5. Whether negotiations may be held;
6. Any contract options including renewal or extension;
7. The uniform terms and conditions by text or reference; and
8. Any other terms, conditions, or instructions specific to the procurement.

B. The procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.

C. The request for quotation shall include a statement that only a small business, as defined in R19-3-501, shall be awarded a contract, unless any of the following apply:
1. The purchase has been unsuccessfully competed under subsection (B), including failure to obtain fair and reasonable prices;
2. The procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list, or
3. The procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-532 renumbered to R4-37-529, new Section

R4-37-532 renumbered from R4-37-535 and amended effective May 7, 1990 (Supp. 90-2). R19-3-532 recodified from R4-37-532 (Supp. 95-1). Former Section R19-3-532 renumbered to R19-3-536 and amended; new Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-533. Repealed

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-533 renumbered to R4-37-530, new Section R4-37-533 renumbered from R4-37-536 and amended effective May 7, 1990 (Supp. 90-2). R19-3-533 recodified from R4-37-533 (Supp. 95-1). Former Section R19-3-533 renumbered to R19-3-537 and amended; new Section R19-3-533 renumbered from R19-3-530 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Repealed by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-534. Quotation Contract Award

A. If only one responsive offer is received, the procurement officer shall determine if the price is fair and reasonable, and in the best interest of the Lottery to award a contract, and place the determination in the procurement file. If time permits, the procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.

B. The procurement officer shall award a contract to the small business determined to be most advantageous to the Lottery in accordance with any evaluation factors identified in the request for quotation.

C. The procurement officer shall notify the Director and the Lottery Commission of an award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to all offerors.

D. The procurement officer shall make the procurement file available to the public on the date the contract award becomes effective and binding.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-534 renumbered to R4-37-531, new Section R4-37-534 renumbered from R4-37-538 and amended effective May 7, 1990 (Supp. 90-2). R19-3-534 recodified from R4-37-534 (Supp. 95-1). Former Section R19-3-534 renumbered to R19-3-538 and amended; new Section R19-3-534 adopted December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-535. Sole Source Procurements

A. For the purposes of this Section, the term "sole-source procurement" means a material or service procured without competition when:
1. There is only a single source for the material or service, or
2. No reasonable alternative source exists.

B. This Section applies only to sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.

C. The procurement officer shall make a written determination that includes the following information:
1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
2. The name of the proposed supplier,
3. The duration and estimated total dollar value of the proposed procurement,
4. Documentation that the price submitted is fair and reasonable pursuant to R19-3-550, and
5. A description of efforts made to seek other sources.

D. The procurement officer shall post the request on the Lottery website and send notice to registered vendors on the state's electronic system to invite comments on the sole-source request for three working days. Following this period, the procurement officer shall either:
1. Issue a written determination with any conditions or restrictions, or
2. Retract the determination if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.

E. If the sole-source procurement is determined, the procurement officer shall negotiate a contract advantageous to the Lottery.

F. The procurement officer shall notify the Director and the Lottery Commission of a contract award. The award will be final and binding unless rejected by the Lottery Commission at a meeting held within 14 calendar days after the award is communicated to the Commissioners. The procurement officer shall send notice of the meeting to the sole source.

G. The procurement officer shall keep a record of all sole-source procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-535 renumbered to R4-37-532, new Section R4-37-535 renumbered from R4-37-539 and amended effective May 7, 1990 (Supp. 90-2). R19-3-535 recodified from R4-37-535 (Supp. 95-1). Former Section R19-3-535 renumbered to Section R19-3-339 and amended; new Section R19-3-535 renumbered

from R19-3-531 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-536. Emergency Procurements

A. For the purposes of this Section, the term "emergency" means any condition creating an immediate and serious need for materials, services, or construction in which the Lottery's best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of the Lottery, the preservation or protection of property, or the health or safety of a person.

B. This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.

C. A Lottery employee with the approval of the immediate supervisor or the Director may proceed with an emergency procurement without approval from the procurement officer if the emergency necessitates immediate response and it is impracticable to contact the procurement officer. The supervisor or Director shall submit a written confirmation of the emergency procurement to the procurement officer within five working days of the emergency.

D. An emergency procurement shall be limited to such actions necessary to address the emergency.

E. An emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the Lottery.

F. The procurement officer shall keep a record of all emergency procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-536 renumbered to R4-37-533, new Section R4-37-536 renumbered from R4-37-540 and amended effective May 7, 1990 (Supp. 90-2). R19-3-536 recodified from R4-37-536 (Supp. 95-1). Former Section R19-3-536 renumbered to Section R19-3-541 and amended; new Section R19-3-536 renumbered from R19-3-532 and amended, effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-537. Competition Impracticable Procurements

A. For the purposes of this Section, "competition impracticable" means a procurement requirement exists which makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R19-3-536. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.

B. The procurement officer shall make a written determination that includes the following information:

1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. § 5-559 and these rules impracticable, unnecessary, or contrary to the public interest;
2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
3. An explanation of why the proposed procurement process is advantageous to the Lottery; and
4. The scope, duration, and estimated total dollar value of the procurement need.

C. The procurement officer shall keep a record of all competition impracticable procurements.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-537 repealed, new Section R4-37-537 renumbered from R4-37-541 and amended effective May 7, 1990 (Supp. 90-2). R19-3-537 recodified from R4-37-537 (Supp. 95-1). Former Section R19-3-537 renumbered to R19-3-542 and amended; new Section R19-3-537 renumbered from R19-3-533 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Pursuant to authority of A.R.S. § 41-1011(C), Laws 2010, 6th Special Session, Ch. 2, authorizes the transfer of A.R.S. citations. Therefore the A.R.S. citations in subsections (A) and (B)(1) were updated. Agency request filed September 24, 2012, Office File No. M12-343 (Supp. 12-3). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-538. Request for Information

The procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the procurement officer.
3. There is no required format to be used for requests for information.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-538 renumbered to R4-37-534, new Section R4-37-538 renumbered from R4-37-542 and amended effective May 7, 1990 (Supp. 90-2). R19-3-538 recodified from R4-37-538

(Supp. 95-1). Former Section R19-3-538 renumbered to R19-3-543 and amended; new Section R19-3-538 renumbered from R19-3-534 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-539. Demonstration Projects

A. The procurement officer may award a contract for a demonstration project. The written determination shall contain the following:
1. Name of the contractor;
2. Description of the project, including unique and innovative features of the project;
3. Statement and explanation that the project is in the best interest of the Lottery;
4. Duration of the project; and
5. Proposed contract terms and conditions.

B. Demonstration projects shall be provided by the contractor at no cost and the Lottery shall not be obligated to purchase or lease the services or materials from the contractor.

C. The procurement officer may purchase or lease from the demonstration contractor within 12 months after the demonstration project begins or within 12 months after the demonstration project ends by making a written determination that contains the following:
1. Name of the contractor;
2. Description of the project, including unique and innovative features of the project;
3. Statement and explanation that lease or purchase is in the best interest of the Lottery;
4. Cost to the Lottery;
5. Duration of the proposed contract; and
6. Proposed contract terms and conditions.

D. The term of the contract resulting from a demonstration project shall not exceed two years.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-539 renumbered to R4-37-535, new Section R4-37-539 renumbered from R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-539 recodified from R4-37-539 (Supp. 95-1). Former Section R19-3-539 renumbered to R19-3-547 and amended; new Section R19-3-539 renumbered from R19-3-535 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-540. General Services Administration Contracts

A. The procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
1. Use of the GSA contract or schedule is cost effective and in the best interest of the Lottery,
2. Price is equal to or less than the contractor's current GSA price,
3. Price is fair and reasonable,
4. Contractor is willing to offer GSA pricing and terms to the Lottery,
5. Comparable products or services are not available under a state or agency contract,
6. Comparable products or services are not restricted under a set-aside contract, and
7. Contractor accepts required Lottery contract terms and conditions.

B. The procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the Lottery. The determination shall contain the following:
1. Name of the contractor;
2. GSA contract or schedule number;
3. Procurement description;
4. Analysis of price, quality, and other relevant factors; and
5. Statement that the price is fair and reasonable.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-540 renumbered to R4-37-536, new Section R4-37-540 renumbered from R4-37-544 and amended effective May 7, 1990 (Supp. 90-2). R19-3-540 recodified from R4-37-540 (Supp. 95-1). Former Section R19-3-540 renumbered to R19-3-549 and amended; new Section R19-3-540 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-541. Contract Clauses

The procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the Lottery's interests are addressed.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a

permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-541 renumbered to R4-37-538, new Section R4-37-541 renumbered from R4-37-545 and amended effective May 7, 1990 (Supp. 90-2). R19-3-541 recodified from R4-37-541 (Supp. 95-1). Former Section R19-3-541 renumbered to R19-3-551 and amended; new Section R19-3-541 renumbered from R19-3-536 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-542. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a Lottery contract without the written consent of the Director.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-542 renumbered to R4-37-539, new Section R4-37-542 renumbered from R4-37-546 and amended effective May 7, 1990 (Supp. 90-2). R19-3-542 recodified from R4-37-542 (Supp. 95-1). Former Section R19-3-542 repealed; new Section R19-3-542 renumbered from R19-3-537 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-543. Change of Name

If a contractor requests to change the name in which it holds a Lottery contract, the procurement officer may, upon receipt of a document indicating name change and any other information requested by the procurement officer in the best interest of the Lottery concerning the name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-543 renumbered to R4-37-540, new Section R4-37-543 renumbered from R4-37-547 and amended effective May 7, 1990 (Supp. 90-2). R19-3-543 recodified from R4-37-543 (Supp. 95-1). Former Section R19-3-543 repealed; new Section R19-3-543 renumbered from R19-3-538 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

R19-3-544. Contract Change Orders and Amendments

A. The procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.

B. Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if approved by the budget manager and the procurement officer determines in writing that the change order or amendment is advantageous to the Lottery and the price is determined fair and reasonable pursuant to R19-3-550.

C. The procurement officer may, in situations in which time or economic considerations preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements in accordance with A.R.S. § 41-2537.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R4-37-544 renumbered to R4-37-541, new Section R4-37-544 renumbered from R4-37-548 and amended effective May 7, 1990 (Supp. 90-2). R19-3-544 recodified from R4-37-544 (Supp. 95-1). Former Section R19-3-544 repealed; new Section R19-3-544 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-545. Multi-term Contracts

A. Unless otherwise provided by law, a contract may be entered into for a period of time up to five years, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal period at the time of contracting.

B. A contract may be entered into for a period exceeding five years if the procurement officer makes a written determination that such a contract would be advantageous to the Lottery and the Lottery Commission pre-approves the extended contract period. The written determination shall include:

1. The initial and renewal option periods for the contract,
2. Documentation that the estimated requirements are reasonable and continuing, and
3. Documentation that such a contract will serve the best interests of the Lottery by encouraging effective competition or otherwise promoting economies in Lottery procurement.

C. The procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is

cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

Historical Note

Adopted as an emergency effective June 5, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-3). Adopted as a permanent rule effective August 29, 1985 (Supp. 85-4). Former Section R19-3-545 renumbered to R19-3-541, new Section R4-37-545 renumbered from R4-37-549 and amended effective May 7, 1990 (Supp. 90-2). R19-3-545 recodified from R4-37-545 (Supp. 95-1). Former Section R19-3-545 renumbered to R19-3-552 and amended; new Section R19-3-545 adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-546. Terms and Conditions

A. The procurement officer shall use the uniform terms and conditions published by the state procurement administrator for state contracts.

B. The procurement officer may make changes to uniform terms and conditions by making a written determination that it is in the best interest of the Lottery and does not conflict with any statutory requirements, provided that the procurement officer gives notice to the state procurement administrator of those changes.

Historical Note

Renumbered to Section R4-37-542 effective May 7, 1990 (Supp. 90-2). R19-3-546 recodified from R4-37-546 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-547. Mandatory Statewide Contracts

The Lottery shall use existing Arizona state contracts to satisfy the need for materials and services covered under such contracts for all non-Lottery specific materials and services, unless an off-contract request is approved by the state procurement administrator.

Historical Note

Renumbered to Section R4-37-543 effective May 7, 1990 (Supp. 90-2). R19-3-547 recodified from R4-37-547 (Supp. 95-1). New Section R19-3-547 renumbered from R19-3-339 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-547 renumbered to R19-3-550; new Section R19-3-547 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-548. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the Lottery, unless a written determination is made by the procurement officer providing otherwise.

Historical Note

Renumbered to Section R4-37-544 effective May 7, 1990 (Supp. 90-2). R19-3-548 recodified from R4-37-548 (Supp. 95-1). New Section adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-548 renumbered to R19-3-551; new Section R19-3-548 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-549. Conflict of Interest

A. A person preparing or assisting in the preparation of specifications, plans, or scopes of work shall not receive any direct benefit from the utilization of those specifications, plans, or scopes of work.

B. The procurement officer may waive the restriction set forth in subsection (A) if the procurement officer determines in writing that the rule's application would not be in the Lottery's best interest. The determination shall state the specific reasons that the restriction in subsection (A) has been waived. If the procurement officer is the individual with the restriction, the Director may waive the restriction set forth in subsection (A) if the Director determines in writing that the rule's application would not be in the Lottery's best interest. If the Director is the person with the restriction, the restriction may be waived by a determination of the office of the Governor.

Historical Note

Renumbered to Section R4-37-545 effective May 7, 1990 (Supp. 90-2). R19-3-549 recodified from R4-37-549 (Supp. 95-1). R19-3-549 renumbered from R19-3-540 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-549 renumbered to R19-3-552; new Section R19-3-549 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-550. Determination of Fair and Reasonable Price

A. For contracts or contract modifications that exceed $100,000, the procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:

1. The contract or modification is based on adequate price competition;
2. Price is supported by an established catalog or market prices;
3. Price is set by law or rule; or
4. Price is supported by relevant, historical price data.

B. The procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:

1. The procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A), or
2. The procurement officer determines in writing that it is in the best interest of the Lottery regardless of the amount of the contract or contract modification.

Historical Note

Adopted effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007
(Supp. 06-4). Section R19-3-550 renumbered to R19-3-553; new Section R19-3-550 renumbered from R19-3-547 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-551. Submission and Certification of Cost or Pricing Data

A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the procurement officer.

B. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.

C. The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief, as of a date mutually determined with the procurement officer.

Historical Note

Section R19-3-551 renumbered from R19-3-541 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-551 renumbered to R19-3-554; new Section R19-3-551 renumbered from R19-3-548 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-552. Refusal to Submit Cost or Pricing Data

A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the procurement officer may reject the offer.

B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the procurement officer may:

1. Reject the contract modification; or
2 Set the amount of the contract modification subject to the contractor's rights under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

Section R19-3-552 renumbered from R19-3-545 and amended effective December 16, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-552 renumbered to R19-3-555; new Section R19-3-552 renumbered from R19-3-549 by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-553. Defective Cost or Pricing Data

A. The procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.

B. The procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.

C. The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under R19-3-565 through R19-3-567. The price, as adjusted by the procurement officer, shall remain in effect until any claim is settled or resolved under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-553 renumbered to R19-3-556; new Section R19-3-553 renumbered from R19-3-550 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-554. Protest of Solicitations and Contract Awards

A. Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.

B. The interested party shall file the protest in writing with the procurement officer and shall include the following information:

1. The name, address, and telephone number of the interested party;
2. The signature of the interested party or the interested party's representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
5. The form of relief requested.

C. If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.

D. In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the procurement officer makes the procurement file available for public inspection.

E. The interested party may submit a written request to the procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the Lottery that resulted in the interested party being unable to submit the protest within the 10 days. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the filing.

F. If the interested party shows good cause, the procurement officer may consider a protest that is not timely filed.

G. The procurement officer shall immediately give notice of a protest to all offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-554 renumbered to R19-3-557; new Section R19-3-554 renumbered from R19-3-551 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-555. Stay of Procurements During the Protest

A. If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the procurement officer shall make a written determination to either:

1. Proceed with the award or contract performance, or
2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the Lottery.

B. The procurement officer shall provide the interested party and other interested parties with a copy of the written determination.

C. Determination of a stay decision shall be issued no later than the time of issuance of the procurement officer's decision in accordance with R19-3-556.

D. Should a stay request be denied by the procurement officer, the protestant may request a procurement stay from the Director. Such requests for a procurement stay shall be submitted within 10 days of notification of the stay denial by the procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4).

Section R19-3-555 renumbered to R19-3-561; new Section R19-3-555 renumbered from R19-3-552 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-556. Resolution of Solicitation and Contract Award Protests

A. The procurement officer has the authority to resolve a protest.

B. The procurement officer shall issue a written decision within 14 days after a protest has been filed under R19-3-554. The decision of the procurement officer shall contain the factual and legal basis for the decision and a statement that the decision of the Lottery may be appealed as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision.

C. The procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt and provide a copy to the Director.

D. The time limit for decisions under subsection (B) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.

E. If the procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the procurement officer had issued an adverse decision.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-556 renumbered to R19-3-564; new Section R19-3-556 renumbered from R19-3-553 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-557. Remedies by the Procurement Officer

A. If the procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the procurement officer shall implement an appropriate remedy.

B. In determining an appropriate remedy, the procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:

1. The seriousness of the procurement deficiency,
2. The degree of prejudice to other interested parties or to the integrity of the procurement system,
3. The good faith of the parties,
4. The extent of performance,

5. The costs to the Lottery,
6. The urgency of the procurement,
7. The impact on the agency's mission, and
8. Other relevant issues.

C. The procurement officer may implement any of the following appropriate remedies:
1. Decline to exercise an option to renew under the contract,
2. Terminate the contract,
3. Amend the solicitation,
4. Issue a new solicitation,
5. Award a contract consistent with procurement statutes and regulations, or
6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). R19-3-557 renumbered to R19-3-565; new Section R19-3-557 renumbered from R19-3-554 and amended by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-558. Appeals to the Director Regarding Protest Decision

A. An interested party may appeal the decision entered or deemed to be entered by the procurement officer to the Director within 30 days after the date the decision is received or deemed received under R19-3-556. The interested party shall file a copy of the appeal with the Director and the procurement officer.

B. The interested party shall file the appeal in writing and shall include the following information:
1. The information prescribed in R19-3-554(B) including the identification of confidential information under R19-3-503,
2. A copy of the decision of the procurement officer, and
3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

C. The Director may consider any appeal that is not filed timely if:
1. The interested party shows good cause, or
2. The Director finds there is a good cause.

D. The Director shall resolve appeals of solicitation decisions as an appealable agency action under A.R.S. Title 41, Chapter 6, Article 10.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-559. Notice of Appeal to the Director Regarding Protests

A. The procurement officer shall promptly give notice of the appeal to all offerors.

B. The Director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R19-3-503.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-559 renumbered to R19-3-566; new Section R19-3-559 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-560. Stay of Procurement During Appeal to Director

A. If a stay is issued under R19-3-555, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the Lottery.

B. Following a review of the procurement officer's decision and the interested party's appeal, the Director may stay the procurement if the Director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the Lottery.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-560 renumbered to R19-3-567; new Section R19-3-560 made by final rulemaking at 19 A.A.R. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-561. Agency Report Regarding Protest Appeals

A. The procurement officer shall file a complete report on any appeal under A.R.S. Title 41, Chapter 6, Article 10 within 21 days after the date the appeal is filed, at the same time furnishing a copy of the report to the interested party. The procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:
1. The appeal;
2. The offer submitted by the interested party;
3. The offer of the firm that is being considered for award;
4. The solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of offers or relevant portions;
6. Any other documents that are relevant to the protest; and

7. A statement by the procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

B. The time limit for filing the agency report under subsection (A) may be extended for good cause by a written determination. The extension shall not exceed an additional 30 days. The procurement officer shall notify the interested party in writing that the time for the issuance of the agency report has been extended and the date by which a decision shall be issued.

C. The interested party shall file comments on the agency report with the procurement officer within 10 days after receipt of the report. The interested party shall provide copies of the comments to the other interested parties.

D. The interested party may submit a written request to the Director for an extension of the period for submission of comments, identifying the reasons for the extension. The procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section repealed; new Section R19-3-561 renumbered from R19-3-555 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2).

R19-3-562. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not-susceptible-for-award determination, or an award does not comply with procurement statutes and rules, the Director shall implement remedies as provided in R19-3-557 or R19-3-563.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 4495, effective January 6, 2007 (Supp. 06-4). Section R19-3-562 renumbered to R19-3-568; new Section R19-3-562 made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-563. Informal Settlement Conference

A. In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision.

B. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, created or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing.

C. If any interested party chooses not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference.

D. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings.

E. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision.

F. When making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

Historical Note

New Section made by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-564; new Section R19-3-563 made by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-564. Dismissal Before Hearing

A. The Director may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:

1. The appeal does not state a valid basis for protest,
2. The appeal is untimely as prescribed under R19-3-558, or
3. The appeal attempts to raise issues not raised in the protest.

B. The procurement officer shall notify the interested party in writing of a determination to dismiss an appeal before hearing.

Historical Note

New Section R19-3-564 renumbered from R19-3-556 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-565; new Section R19-3-564 renumbered from R19-3-563 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-565. Controversies Involving Contract Claims Against the Lottery

A. A claimant shall file a contract claim with the procurement officer within 180 days after the claim arises. The claim shall include the following:

1. The name, address, and telephone number of the claimant;
2. The signature of the claimant or claimant's representative;
3. Identification of the solicitation or contract number;
4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
5. The form and dollar amount of the relief requested.

B. The procurement officer shall have the authority to settle and resolve contract claims.

Historical Note

New Section R19-3-565 renumbered from R19-3-557 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-566; new Section R19-3-565 renumbered from R19-3-564 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-566. Procurement Officer's Decision Regarding Contract Claims

A. If a claim cannot be resolved under R19-3-565, the procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.

B. The procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the Director. The decision shall include:

1. A description of the claim;
2. A reference to the pertinent contract provision;
3. A statement of the factual areas of agreement or disagreement;
4. A statement of the procurement officer's decision, with supporting rationale; and
5. A paragraph which substantially states: "This is the final decision of the procurement officer. This decision may be appealed under A.R.S. Title 41, Chapter 6, Article 10 within 30 days from receipt of the decision. If you appeal, you must file a written notice of appeal containing the information required in R19-3-567(B) with the procurement officer within 30 days from the date you receive this decision."

C. If the procurement officer fails to issue a decision on a contract claim within 60 days after the request is filed, the claimant may proceed as if the procurement officer had issued an adverse decision.

Historical Note

New Section R19-3-566 renumbered from R19-3-559 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-567; new Section R19-3-566 renumbered from R19-3-565 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-567. Appeals and Reports to the Director Regarding Contract Claims

A. The claimant may appeal the final decision of the procurement officer to the Director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the Director and the procurement officer.

B. The claimant shall file the appeal in writing and shall include the following:

1. A copy of the decision of the procurement officer,
2. A statement of the factual areas of agreement or disagreement, and
3. The precise factual or legal error in the decision of the procurement officer from which an appeal is taken.

C. The procurement officer shall file a complete report on the appeal with the Director within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the procurement officer's decision, if applicable, and any other documents that are relevant to the claim.

D. The Director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section R19-3-567 renumbered from R19-3-560 by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-568; new Section R19-3-567 renumbered from R19-3-566 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-568. Controversies Involving Lottery Claims Against the Contractor

If the procurement officer is unable to resolve, by mutual agreement, a claim asserted by the Lottery against a contractor, the procurement officer shall seek resolution under A.R.S. § 41-1092.07. The procurement officer shall furnish a copy of the claim to the Director.

Historical Note

New Section R19-3-568 renumbered from R19-3-562 and amended by final rulemaking at 19 A.A.C. 1641, effective August 4, 2013 (Supp. 13-2). Section renumbered to R19-3-569; new Section R19-3-568 renumbered from R19-3-567 by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

R19-3-569. Guidance

If a procedure is not provided by these rules, the procurement officer may issue a written determination using for guidance A.R.S. § 41-2501 through § 41-2591 or 2 A.A.C. 7, including, but not limited to a procurement utilizing a cooperative contract.

Arizona State Lottery Commission

Historical Note

New Section R19-3-569 renumbered from R19-3-568 and amended by final rulemaking at 22 A.A.R. 2966, effective November 21, 2016 (Supp. 16-4).

5-554. Commission; director; powers and duties; definitions

A. The commission shall meet with the director not less than once each quarter to make recommendations and set policy, receive reports from the director and transact other business properly brought before the commission.

B. The commission shall oversee a state lottery to produce the maximum amount of net revenue consonant with the dignity of the state. To achieve these ends, the commission shall authorize the director to adopt rules in accordance with title 41, chapter 6. Rules adopted by the director may include provisions relating to the following:

1. Subject to the approval of the commission, the types of lottery games and the types of game play-styles to be conducted.

2. The method of selecting the winning tickets or shares for noncomputerized online games, except that no method may be used that, in whole or in part, depends on the results of a dog race, a horse race or any sporting event.

3. The manner of payment of prizes to the holders of winning tickets or shares, including providing for payment by the purchase of annuities in the case of prizes payable in installments, except that the commission staff shall examine claims and may not pay any prize based on altered, stolen or counterfeit tickets or based on any tickets that fail to meet established validation requirements, including rules stated on the ticket or in the published game rules, and confidential validation tests applied consistently by the commission staff. No particular prize in a lottery game may be paid more than once, and in the event of a binding determination that more than one person is entitled to a particular prize, the sole remedy of the claimants is the award to each of them of an equal portion of the single prize.

4. The method to be used in selling tickets or shares, except that no elected official's name may be printed on such tickets or shares. The overall estimated odds of winning some prize or some cash prize, as appropriate, in a given game shall be printed on each ticket or share.

5. The licensing of agents to sell tickets or shares, except that a person who is under eighteen years of age shall not be licensed as an agent.

6. The manner and amount of compensation to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public, including provision for variable compensation based on sales volume.

7. Matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

C. The commission shall authorize the director to issue orders and shall approve orders issued by the director for the necessary operation of the lottery. Orders issued under this subsection may include provisions relating to the following:

1. The prices of tickets or shares in lottery games.

2. The themes, game play-styles, and names of lottery games and definitions of symbols and other characters used in lottery games, except that each ticket or share in a lottery game shall bear a unique distinguishable serial number.

3. The sale of tickets or shares at a discount for promotional purposes.

4. The prize structure of lottery games, including the number and size of prizes available. Available prizes may include free tickets in lottery games and merchandise prizes.

5. The frequency of drawings, if any, or other selections of winning tickets or shares, except that:

(a) All drawings shall be open to the public.

(b) The actual selection of winning tickets or shares may not be performed by an employee or member of the commission.

(c) Noncomputerized online game drawings shall be witnessed by an independent observer.

6. Requirements for eligibility for participation in grand drawings or other runoff drawings, including requirements for the submission of evidence of eligibility within a shorter period than that provided for claims by section 5-568.

7. Incentive and bonus programs designed to increase sales of lottery tickets or shares and to produce the maximum amount of net revenue for this state.

8. The method used for the validation of a ticket, which may be by physical or electronic presentation of a ticket.

D. Notwithstanding title 41, chapter 6 and subsection B of this section, the director, subject to the approval of the commission, may establish a policy, procedure or practice that relates to an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery or may modify an existing rule for an existing online game or a new online game that is the same type and has the same type of game play-style as an online game currently being conducted by the lottery, including establishing or modifying the matrix for an online game by giving notice of the establishment or modification at least thirty days before the effective date of the establishment or modification.

E. The commission shall maintain and make the following information available for public inspection at its offices during regular business hours:

1. A detailed listing of the estimated number of prizes of each particular denomination expected to be awarded in any instant game currently on sale.

2. After the end of the claim period prescribed by section 5-568, a listing of the total number of tickets or shares sold and the number of prizes of each particular denomination awarded in each lottery game.

3. Definitions of all play symbols and other characters used in each lottery game and instructions on how to play and how to win each lottery game.

F. Any information that is maintained by the commission and that would assist a person in locating or identifying a winning ticket or share or that would otherwise compromise the integrity of any lottery game is deemed confidential and is not subject to public inspection.

G. The commission, in addition to other games authorized by this article, may establish multistate lottery games to be conducted concurrently with other lottery games authorized under subsection B of this section. The monies for prizes, for operating expenses and for payment to the state general fund shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. The monies shall be derived from the revenues of multistate lottery games.

H. The commission, in addition to other games authorized by this article, shall establish special instant ticket games with play areas protected by paper tabs designated for use by charitable organizations. The monies for prizes and for operating expenses shall be accounted for separately as nearly as practicable in the lottery commission's general accounting system. Monies saved from the revenues of the special games, by reason of operating efficiencies, shall become other revenue of the lottery commission and revert to the state general fund, except that the commission shall transfer the proceeds from any games that are sold from a vending machine in an age-restricted area to the state treasurer for deposit in the following amounts:

1. Nine hundred thousand dollars each fiscal year in the internet crimes against children enforcement fund established by section 41-199.

2. One hundred thousand dollars each fiscal year in the victims' rights enforcement fund established by section 41-1727.

3. Any monies in excess of the amounts listed in paragraphs 1 and 2 of this subsection, in the state lottery fund established by section 5-571.

I. The commission or director shall not establish or operate any online or electronic keno game or any game played on the internet.

J. The commission or director shall not establish or operate any lottery game or any type of game play-style, either individually or in combination, that uses gaming devices or video lottery terminals as those terms are used in section 5-601.02, including monitor games that produce or display outcomes or results more than once per hour.

K. The director shall print, in a prominent location on each lottery ticket or share, a statement that help is available if a person has a problem with gambling and a toll-free telephone number where problem gambling assistance is available. The director shall require all licensed agents to post a sign with the statement that help is available if a person has a problem with gambling and the toll-free telephone number at the point of sale as prescribed and supplied by the director. The requirements of this subsection apply to tickets and shares printed after July 18, 2000.

L. For the purposes of this section:

1. "Charitable organization" means any nonprofit organization, including not more than one auxiliary of that organization, that has operated for charitable purposes in this state for at least two years before submitting a license application under this article.

2. "Game play-style" means the process or procedure that a player must follow to determine if a lottery ticket or share is a winning ticket or share.

3. "Matrix" means the odds of winning a prize and the prize payout amounts in a given game.

41-2501. Applicability

(L16, Ch. 214, sec. 2 & Ch. 312, sec. 7)

A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.

B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.

C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.

D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.

E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection F of this section.

F. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.

G. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.

H. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.

I. Arizona industries for the blind is exempt from this chapter for purchases of finished goods from members of national industries for the blind and for purchases of raw materials for use in the manufacture of products for sale pursuant to section 41-1972. All other procurement shall be as prescribed by this chapter.

J. Arizona correctional industries is exempt from this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section 41-1622. All other procurement shall be as prescribed by this chapter.

K. The state transportation board and the director of the department of transportation are exempt from this chapter other than section 41-2586 for the procurement of construction or reconstruction, including engineering services, of transportation facilities or highway facilities and any other services that are directly related to land titles, appraisals, real property acquisition, relocation, property management or building facility design and construction for highway development and that are required pursuant to title 28, chapter 20.

L. The Arizona highways magazine is exempt from this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

M. The secretary of state is exempt from this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

N. This chapter is not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

O. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

P. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from this chapter.

Q. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.

2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).

3. For services pursuant to title 36, chapter 29, article 2.

4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

R. The Arizona health care cost containment system may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.

2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.

3. Drug and alcohol services pursuant to section 36-141.

S. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

T. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital.

U. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

V. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2, article 1.

W. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

X. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

Y. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

Z. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

AA. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.

2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

BB. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. The exclusive remedy for disputes or claims relating to contracting pursuant to this subsection is as prescribed by article 9 of this chapter and the rules adopted pursuant to that article. All other procurement by the department shall be as prescribed by this chapter.

CC. The motor vehicle division of the department of transportation is exempt from this chapter for third-party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:

1. The division does not pay any public monies to an authorized third party.

2. Exclusivity is not granted to an authorized third party.

3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

DD. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.

EE. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

FF. The cotton research and protection council is exempt from this chapter for procurements.

GG. Expenditures of monies in the Arizona agricultural protection fund established by section 3-3304 are exempt from this chapter.

HH. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

II. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

JJ. This chapter does not apply to the purchase of water, gas or electric utilities.

KK. This chapter does not apply to professional certifications, professional memberships and conference registrations.

LL. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

MM. This chapter does not apply to contracts for credit reporting services.

NN. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503.

2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

OO. This chapter does not apply to contracts entered into by the department of economic security with a financial institution to serve as a program manager and depository under section 46-903.

E-7

DEPARTMENT OF HEALTH SERVICES (F-17-0508)
Title 9, Chapter 25, Article 3, Training Programs; Article 4, EMCT Certification

GOVERNOR'S REGULATORY REVIEW COUNCIL
ANALYSIS OF FIVE-YEAR REVIEW REPORT

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-7**

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

FROM: Shama Thathi, Staff Attorney

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (F-17-0508)**
Title 9, Chapter 25, Article 3, Training Programs; Article 4, EMCT Certification

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COMMENTS ON THE FIVE-YEAR-REVIEW REPORT

Purpose of the Agency and Number of Rules in the Report

The purpose of the Arizona Department of Health Services (Department) is "to protect the physical and mental health of the people of this state and to promote the highest standards for licensed health care institutions, emergency services, and care facilities for adults and children." Laws 2010, Ch. 8, § 3.

This five-year-review report covers 16 rules in A.A.C. Title 9, Chapter 25, Articles 3 and 4. A.R.S. §§ 36-2202(A)(3), (4) and 36-2209(A)(2) require the Department to adopt standards and criteria pertaining to the quality of emergency care and operation of emergency medical services. The rules in Article 3 establish the application, administrative, course and examination requirements, and possible enforcement actions for training programs providing instruction leading to a student testing for emergency medical care technician (EMCT) certification. The rules in Article 4 establish requirements for certification and recertification, methods to apply for an extension or for downgrading an EMCT's classification, and standards of conduct, and specify types of and considerations for enforcement actions.

Year that Each Rule was Last Amended or Newly Made

All of the rules were last amended on December 1, 2013.

Proposed Action

The Department does not plan to amend the rules unless substantive issues arise.

Substantive or Procedural Concerns

None.

Analysis of the agency's report pursuant to criteria in A.R.S. § 41-1056 and R1-6-301:

1. <u>Has the agency certified that it is in compliance with A.R.S. § 41-1091?</u>

Yes. The Department has certified that it is in compliance with A.R.S. § 41-1091.

2. <u>Has the agency analyzed the rules' effectiveness in achieving their objectives?</u>

Yes. The Department indicates that the rules are effective in achieving their objectives, with the exception of the following rules:

- R9-25-301: The rule could be improved by moving "according to A.R.S. § 41-1009" from subsection (D) to subsection (D)(2).
- R9-25-302: In subsection (D)(1)(a), the required reading proficiency level should be increased to higher than "the 9th grade level."
- R9-25-407: The rule could be improved by adding a requirement for an EMCT to notify the Department in case of a change in their email address.

3. <u>Has the agency received any written criticisms of the rules during the last five years, including any written analysis questioning whether the rules are based on valid scientific or reliable principles or methods?</u>

No. The Department indicates that it has not received any written criticisms of the rules during the last five years.

4. <u>Has the agency analyzed whether the rules are authorized by statute?</u>

Yes. The Department cites to A.R.S. §§ 36-132(A)(7), 36-136(F), 36-2202(A)(3) and (4), and 36-2209(A)(2) as general authority. Under A.R.S. § 36-136(F), the Department "may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health."

As for specific authority, the Department cites to A.R.S. §§ 36-2202 and 36-2204. A.R.S. § 36-2204(A)(1) and (3) require the Department to adopt statewide standardized training, certification and recertification standards, and continuing education criteria for all classifications of EMCTs. A.R.S. §§ 36-2202(H) and 36-2204(6) require EMCTs to apply for certification and recertification and require standards for monitoring performance of EMCTs.

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

Yes. The Department indicates that the rules are consistent with other rules and statutes, with the following exceptions:

- R9-25-305: The cross-reference in subsection (A) should be to subsection (C), rather than to subsection (B).
- R9-25-306: The cross-reference in subsection (D)(1)(f) should be to R9-25-304(A)(2)(d)(i), rather than to R9-25-304(A)(2)(c)(i).
- R9-25-401, R9-25-402, R9-25-403, R9-25-405, R9-25-406, R9-25-408, and R9-25-409: The titles of these rules contain an incorrect citation, A.R.S. § 36-2202(G), which should be changed to A.R.S. § 36-2202(H).

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

Yes. The Department indicates that the rules are enforced as written by the Department.

7. Has the agency analyzed whether the rules are clear, concise, and understandable?

Yes. The Department indicates that the rules are clear, concise, and understandable, with the following two exceptions:

- R9-25-301: The rule could be made clearer by removing the word "definition" from the title of the rule since no definitions are included in the rule.
- R9-25-305: The rule could be made more concise by removing subsections (D)(3)(b)(i) and (ii) and (F)(3)(d)(i) through (iii) because the time period for the subsection's applicability has passed. Additionally, subsection (C)(3) could also be removed because it is duplicative of subsection (A)(3).

8. Has the agency analyzed whether:

a. The rules are more stringent than corresponding federal law?

Yes. The Department indicates that there is no corresponding federal law.

b. There is statutory authority to exceed the requirements of federal law?

Not applicable.

9. For rules adopted after July 29, 2010, has the agency analyzed whether:

a. The rules require issuance of a regulatory permit, license or agency authorization?

Yes. The rules require issuance of a specific agency authorization.

b. It is in compliance with the general permit requirements of A.R.S. § 41-1037 or explained why it believes an exception applies?

Yes. The agency authorizations are authorized by A.R.S. § 36-2204(3) for training programs, and A.R.S. § 36-2202(A)(2) and (H) for EMCT certification.

10. Has the agency indicated whether it completed the course of action identified in the previous five-year-review report?

Yes. In the five-year-review report approved in 2012, the Department stated that it planned to amend the rules to comply with statutory changes and to file a Notice of Exempt Rulemaking by December 31, 2013.[1] The Department complied with the plan.

Conclusion

The Department does not plan to amend the rules unless substantive issues arise. The report meets the requirements of A.R.S. § 41-1056 and R1-6-301. This analyst recommends the report be approved.

[1] See 19 A.A.R. 4032, December 13, 2013.

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

MEETING DATE: May 2, 2017 **AGENDA ITEM: E-7**

TO: Members of the Governor's Regulatory Review Council

FROM: GRRC Economic Team

DATE : April 18, 2017

SUBJECT: **DEPARTMENT OF HEALTH SERVICES (F-17-0508)**
Title 9, Chapter 25, Article 3, Training Programs; Article 4, EMCT Certification

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I have reviewed the five-year-review report submitted by the Arizona Department of Health Services (Department) for Title 9, Chapter 25, Articles 3 and 4. An economic, small business, and consumer impact statement (EIS) was prepared as part of the rulemaking process. The five-year review reflected on this analysis. The following includes comments on the analysis provided for compliance with A.R.S. § 41-1056.

1. <u>Economic Impact Comparison</u>

Articles 3 and 4 were last revised and made effective by exempt rulemaking on December 1, 2013. As a part of the rulemaking, the Department added requirements to Article 3 for a training program director to have training related to instructional methodology; to notify students of eligibility requirements and prerequisite knowledge, skills, and abilities for a course; and to document and maintain documentation that a student meets eligibility requirements and prerequisites for a course or refresher challenge examination. The Department believes these changes provided a minimal benefit to training programs.

The Department also indicates that changes were made to the language regarding training program medical directors to maintain consistency with the language for administrative medical directors. The Department deemed this significantly beneficial.

Further, the rulemaking updated Article 4's cross-references and introduced a new EMCT classification scheme. Changes included clarification of confidentiality requirements, the two-year certification/recertification period, probationary conditions, and other rules regarding EMCTs. The Department notes that these changes have provided a significant benefit to an applicant or EMCT.

2. Has the agency determined that the rules impose the least burden and costs to persons regulated by the rules?

The Department determined that the rules impose the least burdens and costs to persons regulated by the rules.

3. Was an analysis submitted to the agency under A.R.S. § 41-1056(A)(7)?

No analysis was received by the Department that compares the rules' impact on this state's business competitiveness to the impact on businesses in other states under A.R.S. § 41-1056(A)(7).

4. Conclusion

After review, staff concludes that the report complies with A.R.S. § 41-1056 and recommends approval.

ARIZONA DEPARTMENT
OF HEALTH SERVICES

March 16, 2017

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GRRC

Nicole A. Ong, Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 402
Phoenix, AZ 85007

RE: Report for A.A.C. Title 9, Chapter 25, Articles 3 and 4 of Emergency Medical Services

Dear Ms. Ong:

According to the five-year-review report schedule of the Governor's Regulatory Review Council (Council), a report for A.A.C. Title 9, Chapter 25 is due to the Council no later than June 301, 2017. The Arizona Department of Health Services (Department) has reviewed A.A.C. Title 9, Chapter 25, Articles 3 and 4, and is enclosing a report to the Council for these rules.

The Department believes that this report complies with the requirements of A.R.S. § 41-1056. A five-year-review summary, information that is identical for all the rules, information for individual rules, the rules reviewed, and the general and specific authority are included in the package. As described in the report, the Department does not plan to amend the rules in 9 A.A.C. 25, Article 3 or 4 at this time.

The Department certifies that it is in compliance with A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-1020.

Sincerely,

Michelle Bodi
Director's Designee

MB:rms
Enclosures

ARIZONA DEPARTMENT
OF HEALTH SERVICES

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES

EMERGENCY MEDICAL SERVICES

ARTICLE 3. TRAINING PROGRAMS

ARTICLE 4. EMCT CERTIFICATION

March 2017

FIVE-YEAR-REVIEW REPORT

TITLE 9. HEALTH SERVICES

CHAPTER 25. DEPARTMENT OF HEALTH SERVICES

EMERGENCY MEDICAL SERVICES

ARTICLE 3. TRAINING PROGRAMS

ARTICLE 4. EMCT CERTIFICATION

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FIVE-YEAR-REVIEW REPORT
TITLE 9. HEALTH SERVICES
CHAPTER 25. DEPARTMENT OF HEALTH SERVICES
EMERGENCY MEDICAL SERVICES
ARTICLE 3. TRAINING PROGRAMS
ARTICLE 4. EMCT CERTIFICATION

FIVE-YEAR-REVIEW SUMMARY

Arizona Revised Statutes (A.R.S.) §§ 36-2202(A)(3) and (4) and 36-2209(A)(2) require the Arizona Department of Health Services (Department) to adopt standards and criteria pertaining to the quality of emergency care, rules necessary for the operation of emergency medical services, and rules for carrying out the purposes of A.R.S. Title 36, Chapter 21.1. A.R.S. § 36-2204(1) and (3) requires the Department to adopt statewide standardized training, certification and recertification standards, and standardized continuing education criteria for all classifications of emergency medical care technicians (EMCTs). A.R.S. §§ 36-2202(H) and 36-2204(6) require EMCTs to apply for certification and recertification and require standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of EMCTs.

The Department has implemented these statutes in Arizona Administrative Code (A.A.C.) Title 9, Chapter 25, Articles 3 and 4, which were last revised effective December 2013. The rules in 9 A.A.C. 25, Article 3 establish the application, administrative, and course and examination requirements and possible enforcement actions for training programs providing instruction leading to a student testing for EMCT certification. The rules in 9 A.A.C. 25, Article 4 establish requirements for certification and recertification, methods to apply for an extension or for downgrading an EMCT's classification, and standards of conduct, and specify types of and considerations for enforcement actions.

After an analysis of the rules in 9 A.A.C. 25, Articles 3 and 4, the Department has determined that the rules are effective, enforced as written, and clear, concise, and understandable. No written criticism or analysis of competitiveness for the rules has been received by the Department. Although the rules, themselves, are consistent with statutes and rules, several of the rules in Article 4 have an incorrect statutory reference in the titles of the rules. The Department believes that the probable benefits of the rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to regulated persons necessary to achieve the underlying regulatory objective. The Department does not plan to revise the rules unless a substantive issue arises.

INFORMATION THAT IS IDENTICAL FOR ALL OF THE RULES

1. Authorization of the rule by existing statute

The general statutory authority for the rules in 9 A.A.C. 25, Articles 3 and 4 are A.R.S. §§ 36-136(A)(7), 36-136(F), 36-2202(A)(3) and (4), and 36-2209(A)(2).

The specific statutory authority for the rules in 9 A.A.C. 25, Article 3 are A.R.S. § 36-2204(1) and (3).

The specific statutory authority for the rules in 9 A.A.C. 25, Article 4 are A.R.S. §§ 36-2202(A)(2) and 36-2204(1) and (6).

2. The purpose of the rule

The purpose of the rules in 9 A.A.C. 25, Article 3 is to specify statewide standards for certification of training programs for all classifications of EMCTs.

The purpose of the rules in 9 A.A.C. 25, Article 4 is to specify statewide standardized training, certification, and recertification standards, and standardized continuing education criteria for all classifications of EMCTs.

3. Analysis of effectiveness in achieving the objective

The rules in 9 A.A.C. 25, Articles 3 and 4 are effective in achieving their respective objectives, although the effectiveness of R9-25-301, R9-25-302, and R9-25-407 could be improved as described under Information for Individual Rules.

4. Analysis of consistency with state and federal statutes and rules

Except for R9-25-305 and R9-25-306 as described under Information for Individual Rules, the rules in 9 A.A.C. 25, Article 3 consistent with state and federal statutes and rules.

Except for R9-25-404, which is correct, and R9-25-407, which does not reference the citation, the titles of the rules in Article 4 contain an incorrect statutory citation. The citation should be to A.R.S. § 36-2202(H), rather than to A.R.S. § 36-2202(G), which was changed by Laws 2012, Ch. 94. Otherwise, the rules in Article 4 are consistent with state and federal statutes and rules.

5. Status of enforcement of the rule

The rules in 9 A.A.C. 25, Articles 3 and 4 are enforced without difficulty by the Department.

6. Analysis of clarity, conciseness, and understandability

The rules in 9 A.A.C. 25, Articles 3 and 4 are clear, concise, and understandable, although the clarity of R9-25-301 and the conciseness of R9-25-305 could be improved as described under Information for Individual Rules.

7. Summary of the written criticisms of the rule received within the last five years

The Department has not received any written criticisms of the rules in the past five years.

8. Economic, small business, and consumer impact comparison

The rules in 9 A.A.C. 25, Articles 3 and 4 were last revised by exempt rulemaking, to comply with Laws 2012, Ch. 94, and published in the *Arizona Administrative Register* (A.A.R.) at 19 A.A.R. 4032, effective December 1, 2013. In this economic, small business, and consumer impact comparison, annual cost/revenues are designated as "minimal" when less than $1,000.00; "moderate" when between $1,000.00 and $10,000.00; "substantial" when $10,000.00 or more; and "significant" when meaningful or important, but not readily subject to quantification.

Currently, 76 training programs are regulated under Article 3. Of these, 31 provide Basic Life Support (BLS) training, 7 provide only Advanced Life Support (ALS) training, and 38 provide both BLS and ALS training. Of these, 24 are associated with community colleges, 34 are governmental, 3 are associated with hospitals, and 15 are private businesses. During calendar year 2016, a total of 631 courses/refresher challenge examinations were provided, 232 courses leading to EMT certification, 39 for Paramedic certification, 196 EMT refresher courses, 86 ALS refresher courses, and 78 refresher challenge examinations. In the 22 months between April 15, 2015 and February 14, 2017, the number of students in training courses included: 5,085 in EMT certification courses, 4,221 in EMT refresher courses, 786 in Paramedic certification courses, and 1,432 in ALS refresher courses. Some training programs, especially those associated with smaller fire departments or with fire districts, provide courses to 10 or fewer students per year, while others, especially those associated with community colleges, may provide training to 100 or more students per year and offer multiple courses running concurrently. The Department receives an average of four new applications per year and expects to provide reviews of 27 existing training programs in 2017 and of 47 existing training programs in 2018. In the past five years, the Department has received four complaints about compliance that have been investigated. One is still pending, and for the others, the training programs were found to have violations, which were identified and corrected, and brought back into compliance.

Approximately 18,450 EMCTs are regulated under Article 4. Of these, approximately 11,640 are EMTs, approximately 70 are AEMTs, 19 are EMT-I(99)s, and approximately 6,725 are Paramedics. Certification is for a two-year period. During 2015 and 2016, the Department received a total of 4,388 initial applications, of which 4,250 were approved; 14,148 applications for recertification, of which 13,931 were approved; 25 requests for extensions, 23 of which were approved; and 34 requests for downgrading, of which 33 were approved. In addition, 853 applications were received from EMCTs requesting certification at a higher classification of EMCT, 736 of which were approved. During the same time period, the Department conducted 121

investigations involving EMCTs, resulting in 18 EMCTs on probation, 33 decrees of censure, and 6 revocations.

As part of the 2013 rulemaking, the Department added requirements in Article 3 for a training program director to have training related to instructional methodology; to notify students of eligibility requirements and prerequisite knowledge, skill, and abilities for a course; and to document and maintain documentation that a student meets eligibility requirements and prerequisites for a course or refresher challenge examination. The Department estimates that these changes may have caused a minimal cost to a training program. The rulemaking also removed unnecessary definitions, corrected cross-references, allowed an applicant to submit an accreditation certificate from a national accrediting organization in lieu of routine inspections; replaced a requirement for a lead instructor to be "present" with a requirement for the lead instructor to be available for student-instructor interaction to allow for on-line instruction; removed the requirement for a written test for an initial certification course to have 150 multiple choice questions to allow for computer-generated smart exams based on student responses; and removed the prohibition of a training program director or an instructor from proctoring a written test. The Department estimates that these changes may have provided a minimal benefit to a training program. The revised rules also updated qualifications for a training program medical director to be consistent with new wording for administrative medical directors in R9-25-202, providing a significant benefit to the three base hospitals that also conduct a certified a training program. Because Laws 2012, Ch. 94, adopted a new classification scheme for EMCTs, with different knowledge and skill requirements, additional training was required for EMCTs who were certified at the previous EMCT classification levels (EMT-Bs and EMT-Ps) and not registered by a national certification organization. For these EMCTs, the rulemaking had included training courses to enable the EMCTs to obtain the new knowledge and skills to transition them to the requirements of the new EMCT classifications. The Department believes that adding the transition training courses and a time-frame for transition training to the rules provided a significant, if not substantial, benefit to an EMCT who needed to obtain the new knowledge and skills to retain employment at the same pay level. As of February 2017, 71 EMT-Bs still need to transition to the EMT classification level and 269 EMT-Ps need to transition to the Paramedic level.

In Article 4, the 2013 rulemaking updated cross-references and the new EMCT classification scheme, removed duplicative/informational requirements, and reorganized the rules to improve clarity. The rulemaking also clarified confidentiality requirements, the two-year certification/recertification period, when an individual may apply for initial certification, when an application for recertification may be made, when probation is a condition of recertification, the information/documentation required when applying for an extension to file an application for

recertification, the conditions of the extension, and what happens if an individual who received an extension is not recertified. The rulemaking also clarified and consolidated downgrading requirements, improved the understandability of conditions that could lead to enforcement actions, and clarified what those enforcement actions could be. The Department estimates that these changes may have provided a significant benefit to an applicant or EMCT.

9. Summary of business competitiveness analyses of the rules

The Department did not receive a business competitiveness analysis of the rules in the last five years.

10. Status of the completion of action indicated in the previous five-year-review report

In the 2012 Five-Year-Review Report, the Department stated that the Department planned to amend the rules in 9 A.A.C. 25 to comply with statutory changes made in Laws 2012, Ch. 94 and to file a Notice of Exempt Rulemaking by December 31, 2013. The Department complied with this plan. The Department also planned to amend applicable rules in Articles 3 and 4 and submit a Notice of Final Rulemaking to the Governor's Regulatory Review Council (Council) by December 2015 if any issues identified for Articles 3 or 4 were not addressed in the exempt rulemaking. No such issues were identified, so the Department complied with this plan.

11. A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective

The Department has determined that the rules in 9 A.A.C. 25, Articles 3 and 4 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective, despite the minor improvements that may be made to the rules.

12. Analysis of stringency compared to federal laws

Federal laws do not apply to the rules in 9 A.A.C. 25, Articles 3 and 4.

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with section 41-1037

The rules require the issuance of a specific agency authorization, which is authorized by A.R.S. § 36-2204(3) for training programs and A.R.S. § 36-2202 (A)(2) and (H) for EMCT certification, so a general permit is not applicable.

14. Proposed course of action

The Department does not plan to amend the rules in 9 A.A.C. 25, Articles 3 and 4 until substantive issues arise.

INFORMATION FOR INDIVIDUAL RULES

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Definitions; Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

2. <u>Objective</u>

The objectives of the rule are to establish application and review requirements for training program certification.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective but could be improved by moving "according to A.R.S. § 41-1009" from subsection (D) to subsection (D)(2).

6. <u>Analysis of clarity, conciseness, and understandability</u>

The rule is clear, concise, and understandable but could be improved by removing the word "definition" from the title of the rule since no definitions are included in the rule.

R9-25-302. Administration (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

2. <u>Objective</u>

The objective of the rule is to establish to administrative requirements for training program certificate holders.

3. <u>Analysis of effectiveness in achieving the objective</u>

The rule is effective in achieving its objective but might be improved by increasing the required reading proficiency level in subsection (D)(1)(a) to higher than "the 9th grade level."

R9-25-303. Changes Affecting a Training Program Certificate (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

2. <u>Objective</u>

The objectives of the rule are to specify requirements when:

a. There is a change in the name, address, or e-mail address of the training program certificate holder;

b. There is a change in the training program medical director or training program director; or

c. A training program certificate holder intends to add a course.

R9-25-304. Course and Examination Requirements (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1), (2), and (3))

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2204(2) as additional specific authority.

2. Objective

The objective of the rule is to establish general course and examination requirements for a course taught by a training program.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

2. Objective

The objective of the rule is to establish requirements that are specific to a course and the process for renewal of air ambulance licensure.

4. Analysis of consistency with state and federal statutes and rules

The cross-reference in subsection (A) should be to subsection (C) rather that to subsection (B). Otherwise, the rule is consistent with state and federal statutes and rules.

6. Analysis of clarity, conciseness, and understandability

The rule is mostly clear, concise, and understandable but could be improved by removing subsections (D)(3)(b)(i) and (ii) and (F)(3)(d)(i) through (iii), because the time period for the subsection's applicability has passed, and subsection (C)(3), because it is duplicative of subsection (A)(3).

R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

2. Objective

The objectives of the rule are to establish requirements for a training program certificate holder to:

a. Submit certain documentation to the Department within specified time periods, and

b. Maintain records required under the Article.

4. Analysis of consistency with state and federal statutes and rules

The cross-reference in subsection (D)(1)(f) should be to R9-25-304(A)(2)(d)(i), rather than to R9-25-304(A)(2)(c)(i). Otherwise, the rule is consistent with state and federal statutes and rules.

R9-25-307. Training Program Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

2. Objective

The objectives of the rule are to establish:

a. The grounds for enforcement, and

b. The potential enforcement actions that may be taken against a training program certificate holder.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (6), and (7))

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2202(A)(6) and (H) and 36-2204(7) as additional specific authority.

2. Objective

The objective of the rule is to establish general requirements relating to EMCT certification.

R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (6), and (7))

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2202(A)(6) and (H) and 36-2204(7) as additional specific authority.

2. Objective

The objective of the rule is to establish eligibility standards for certifying and recertifying EMCTs.

R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (G) and 36-2204(1) and (6))

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2202(H) as additional specific authority.

2. Objective

The objective of the rule is to establish application requirements for initial EMCT certification.

R9-25-404. Application Requirements for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), (B), and (H) and 36-2204(1), (4), and (6))

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2202(A)(6), (B), and (H) and 36-2204(4) as additional specific authority.

2. Objective

The objective of the rule is to establish requirements related to application for EMCT recertification.

R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (4), (5), and (7))

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2202(A)(6) and (H) and 36-2204(1), (4), (5), and (7) as additional specific authority.

2. Objective

The objective of the rule is to establish standards for requesting and obtaining an extension to file for EMCT recertification.

R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (G) and 36-2204(1) and (6))

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2204(H) as additional specific authority.

2. Objective

The objectives of the rule are to:

a. Establish requirements for downgrading to a lower classification of certification during the certification period, and

b. Clarify that downgrading may also be done upon recertification.

R9-25-407. Notification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

1. Authorization of the rule by existing statute

The rule has A.R.S. § 36-2211 as additional specific authority.

2. Objective

The objective of the rule is to establish requirements for EMCTs to notify the Department upon the occurrence of specified events.

3. Analysis of effectiveness in achieving the objective

The rule is effective in achieving its objective but could be improved by adding a requirement for an EMCT to notify the Department of a change in the EMCT's email address.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G), 36-2204(1), (6), and (7), and 36-2211)

1. Authorization of the rule by existing statute

The rule has A.R.S. §§ 36-2202(A)(6) and (H) and 36-2204(7), and 36-2211 as additional specific authority.

2. Objective

The objective of the rule is to clarify the meaning of terms used in A.R.S. § 36-2211 that may be grounds for enforcement actions.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G), 36-2204(1), (6), and (7), and 36-2211))

1. <u>Authorization of the rule by existing statute</u>

The rule has A.R.S. §§ 36-2202(A)(6) and (H) and 36-2204(7), and 36-2211 as additional specific authority.

2. <u>Objective</u>

The objectives of the rule are to establish:

a. The grounds for enforcement, and

b. The potential enforcement actions that may be taken against an applicant or EMCT.

ATTACHMENT A

ARTICLE 3. TRAINING PROGRAMS

R9-25-301. Definitions; Application for Certification (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. To apply for certification as a training program, an applicant shall submit an application to the Department, in a Department-provided format, including:
1. The applicant's name, address, and telephone number;
2. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
3. The name of each course the applicant plans to provide;
4. Attestation that the applicant has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov for the courses specified in subsection (A)(3);
5. The name, telephone number, and e-mail address of the training program medical director;
6. The name, telephone number, and e-mail address of the training program director;
7. Attestation that the applicant will comply with all requirements in A.R.S. Title 36, Chapter 21.1 and 9 A.A.C. 25;
8. Attestation that all information required as part of the application has been submitted and is true and accurate; and
9. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

B. An applicant may submit to the Department a copy of an accreditation report if the applicant is currently accredited by a national accrediting organization.

C. The Department shall certify a training program if the applicant:
1. Has not operated a training program that has been decertified by the Department within five years before submitting the application,
2. Submits an application that is complete and compliant with requirements in this Article, and
3. Has not knowingly provided false information on or with an application required by this Article.

D. The Department, according to A.R.S. § 41-1009:
1. Shall assess a training program at least once every 24 months after certification to determine ongoing compliance with the requirements of this Article; and
2. May inspect a training program:
   a. As part of the substantive review time-frame required in A.R.S. §§ 41-1072 through 41-1079, or
   b. As necessary to determine compliance with the requirements of this Article.

E. The Department shall approve or deny an application under this Article according to Article 12 of this Chapter.

F. A training program certificate is valid only for the name of the training program certificate holder and the courses listed by the Department on the certificate and may not be transferred to another person.

R9-25-302. Administration (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. A training program certificate holder shall ensure that a training program medical director:
1. Is a physician or exempt from physician licensing requirements under A.R.S. §§ 32-1421(A)(7) or 32-1821(3);
2. Meets one of the following:
   a. Has emergency medicine certification issued by a member board of the American Board of Medical Specialties,
   b. Has emergency medical services certification issued by the American Board of Emergency Medicine,

c. Has completed an emergency medicine residency training program accredited by the Accreditation Council for Graduate Medical Education or approved by the American Osteopathic Association, or
d. Is an emergency medicine physician in an emergency department located in Arizona and has current certification that meets the requirements in R9-25-201(A)(1)(d)(i) through (iii); and

3. Before the start date of a course session, reviews the course content outline and final examinations to ensure consistency with the national educational standards for the applicable EMCT classification level.

B. A training program certificate holder shall ensure that a training program director:

1. Is one of the following:
   a. A physician with at least two years of experience providing emergency medical services as a physician;
   b. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services as a doctor of allopathic medicine or osteopathic medicine;
   c. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services as a registered nurse;
   d. A physician assistant with at least two years of experience providing emergency medical services as a physician assistant; or
   e. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower level of EMCT;
2. Has completed 24 hours of training related to instructional methodology including:
   a. Organizing and preparing materials for didactic instruction, clinical training, field training, and skills practice;
   b. Preparing and administering tests and practical examinations;
   c. Using equipment and supplies;
   d. Measuring student performance;
   e. Evaluating student performance;
   f. Providing corrective feedback; and
   g. Evaluating course effectiveness;
3. Supervises the day-to-day operation of the conrses offered by the training program;
4. Supervises and evaluates the lead instructor for a course session;
5. Monitors the training provided by all preceptors providing clinical training or field training; and
6. Does not participate as a student in a course session, take a refresher challenge examination, or receive a certificate of completion for a course given by the training program.

C. A training program certificate holder shall:

1. Maintain with an insurance company authorized to transact business in this state:
   a. A minimum single claim professional liability insurance coverage of $500,000, and
   b. A minimum single claim general liability insurance coverage of $500,000 for the operation of the training program; or
2. Be self-insured for the amounts in subsection (C)(1).

D. A training program certificate holder shall ensure that policies and procedures are:

1. Established, documented, and implemented covering:
   a. Student enrollment, including verification that a student has proficiency in reading at the 9th grade level and meets all course admission requirements;
   b. Maintenance of student records and medical records, including compliance with all applicable state and federal laws governing confidentiality, privacy, and security; and
   c. For each course offered:
      i. Student attendance requirements, including leave, absences, make-up work, tardiness, and causes for suspending or expelling a student for unsatisfactory attendance;

ii. Grading criteria, including the minimum grade average considered satisfactory for continued enrollment and standards for suspending or expelling a student for unsatisfactory grades;
iii. Administration of final examinations; and
iv. Student conduct, including causes for snspending or expelling a student for unsatisfactory condnct;

2. Reviewed annually and updated as necessary; and
3. Maintained on the premises and provided to the Department at the Department's request.

R9-25-303. Changes Affecting a Training Program Certificate (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. No later than 10 days after a change in the name, address, or e-mail address of the training program certificate holder listed on a training program certificate, the training program certificate holder shall notify the Department of the change, in a Department-provided format, including:
1. The current name, address, and e-mail address of the training program certificate holder;
2. The certificate number for the training program;
3. The new name, new address, or new e-mail address and the date of the name, address, or e-mail address change;
4. If applicable, attestation that the training program certificate holder has insurance required in R9-25-302(C) that is valid for the new name or new address;
5. Attestation that all information submitted to the Department is true and correct; and
6. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

B. No later than 10 days after a change in the training program medical director or training program director, a training program certificate holder shall notify the Department, in a Department-provided format, including:
1. The name and address of the training program certificate holder;
2. The certificate number for the training program;
3. The name, telephone number, and e-mail address of the new training program medical director or training program director and the date of the change; and
4. The signature or electronic signature of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

C. A training program certificate holder that intends to add a course shall submit to the Department a request for approval, in a Department-provided format, including:
1. The name and address of the training program certificate holder;
2. The certificate number for the training program;
3. The name, telephone number, and e-mail address of the applicant's chief administrative officer;
4. The name of each course the training program certificate holder plans to add;
5. Attestation that the training program certificate holder has the equipment and facilities that meet the requirements established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov for the courses specified in subsection (C)(4);
6. Attestation that all information required as part of the request is true and accurate; and
7. The signature or electronic signatnre of the applicant's chief administrative officer or the chief administrative officer's designated representative and date of signature or electronic signature.

D. For notification made under subsection (A) of a change in the name or address of a certificate holder, the Department shall issue an amended certificate to the training program certificate holder that incorporates the new name or address but retains the date on the current certificate.

E. The Department shall approve or deny a request for the addition of a course in subsection (C) according to Article 12 of this Chapter.

F. A training program certificate holder shall not conduct a course until an amended certificate is issued by the Department.

R9-25-304. Course and Examination Requirements (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1), (2), and (3))

A. For each course provided, a training program director shall ensure that:

1. The required equipment and facilities established for the course are available for use;
2. The following are prepared and provided to course applicants before the start date of a course session:
   a. A description of requirements for admission, course content, course hours, course fees, and course completion, including whether the course prepares a student for:
      i. A national certification organization examination for the specific EMCT classification level,
      ii. A statewide standardized certification test under the state certification process, or
      iii. Recertification at a specific EMCT classification level;
   b. A list of books, equipment, and supplies that a student is required to purchase for the course;
   c. Notification of eligibility for the course as specified in R9-25-305(B), (D)(1) and (2), or (F)(1) and (2), as applicable;
   d. Notification of any specific requirements for a student to begin any component of the course, including, as applicable:
      i. Prerequisite knowledge, skill, and abilities;
      ii. Physical examinations;
      iii. Immunizations;
      iv. Documentation of freedom from infectious tuberculosis;
      v. Drug screening; and
      vi. The ability to perform certain physical activities; and
   e. The policies for the course on student attendance, grading, student conduct, and administration of final examinations, required in R9-25-302(D)(1)(c)(i) through (iv);
3. Information is provided to assist a student to:
   a. Register for and take an applicable national certification organization examination;
   b. Complete application forms for registration in a national certification organization; and
   c. Complete application forms for certification under 9 A.A.C. 25, Article 4;
4. A lead instructor is assigned to each course session who:
   a. Is one of the following:
      i. A physician with at least two years of experience providing emergency medical services;
      ii. A doctor of allopathic medicine or osteopathic medicine licensed in another state or jurisdiction with at least two years of experience providing emergency medical services;
      iii. An individual who meets the definition of registered nurse in A.R.S. § 32-1601 with at least two years of experience providing emergency medical services;
      iv. A physician assistant with at least two years of experience providing emergency medical services; or
      v. An EMCT with at least two years of experience at that classification of EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
   b. Has completed training related to instructional methodology specified in R9-25-302(B)(2);
   c. Except as provided in subsection (A)(4)(d), is available for student-instructor interaction during all course hours established for the course session; and
   d. Designates an individual who meets the requirements in subsections (A)(4)(a) and (b) to be present and act as the lead instructor when the lead instructor is not present; and
5. Clinical training and field training are provided:

a. Under the supervision of a preceptor who has at least two years of experience providing emergency medical services and is one of the following:
   i. An individual licensed in this or another state or jurisdiction as a doctor of allopathic medicine or osteopathic medicine;
   ii. An individual licensed in this or another state or jurisdiction as a registered nurse;
   iii. An individual licensed in this or another state or jurisdiction as a physician assistant; or
   iv. An EMCT, only for courses to prepare an individual for certification or recertification at the same or lower EMCT classification level;
b. Consistent with the clinical training and field training requirements established for the course; and
c. If clinical training or field training are provided by a person other than the training program certificate holder, under a written agreement with the person providing the clinical training or field training that includes a termination clause that provides sufficient time for a student to complete the training upon termination of the written agreement.

B. A training program director may combine the students from more than one course session for didactic instruction.

C. For a final examination or refresher challenge examination for each course offered, a training program director shall ensure that:
1. The final examination or refresher challenge examination for the course is completed onsite at the training program or at a facility used for course instruction;
2. Except as provided in subsection (D), the final examination or refresher challenge examination for a course includes a:
   a. Written test:
      i. With one absolutely correct answer, two incorrect answers, and one distractor, none of which is "all of the above" or "none of the above";
      ii. With 150 multiple-choice questions for the:
         (1) Final examination for a refresher course, or
         (2) Refresher challenge examination for a course;
      iii. That covers the learning objectives of the course with representation from all topics covered by the course; and
      iv. That requires a passing score of 75% or higher in no more than three attempts for a final examination and no more than one attempt for a refresher challenge examination; and
   b. Comprehensive practical skills test:
      i. Evaluating the student's technical proficiency in skills consistent with the national education standards for the applicable EMCT classification level, and
      ii. Reflecting the skills necessary to pass a national certification organization examination at the applicable EMCT classification level;
3. The identity of each student taking the final examination or refresher challenge examination is verified;
4. A student does not receive verbal or written assistance from any other individual or use notes, books, or documents of any kind as an aid in taking the examination;
5. A student who violates subsection (C)(4) is not permitted to complete the examination or to receive a certificate of completion for the course or refresher challenge examination; and
6. An instructor who allows a student to violate subsection (C)(4) or assists a student in violating subsection (C)(4) is no longer permitted to serve as an instructor.

D. A training program director shall ensure that a standardized certification test for a student under the state certification process includes:
1. A written test that meets the requirements in subsection (C)(2)(a); and
2. Either:
   a. A comprehensive practical skills test that meets the requirements in subsection (C)(2)(b), or
   b. An attestation of practical skills proficiency on a Department-provided form.

E. A training program director shall ensure that:
1. A student is allowed no longer than six months after the date of the last day of classroom instruction for a course session to complete all course requirements,
2. There is a maximum ratio of four students to one preceptor for the clinical training portion of a course, and
3. There is a maximum ratio of one student to one preceptor for the field training portion of a course.

F. A training program director shall:
1. For a student who completes a course, issue a certificate of completion containing:
   a. Identification of the training program,
   b. Identification of the course completed,
   c. The name of the student who completed the course,
   d. The date the student completed all course requirements,
   e. Attestation that the student has met all course requirements, and
   f. The signature or electronic signature of the training program director and the date of signature or electronic signature; and
2. For an individual who passes a refresher challenge examination, issue a certificate of completion containing:
   a. Identification of the training program,
   b. Identification of the refresher challenge examination administered,
   c. The name of the individual who passed the refresher challenge examination,
   d. The date or dates the individual took the refresher challenge examination,
   e. Attestation that the individual has passed the refresher challenge examination, and
   f. The signature or electronic signature of the training program director and the date of signature or electronic signature.

R9-25-305. Supplemental Requirements for Specific Courses (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. Except as specified in subsection (B), a training program certificate holder shall ensure that a certification course offered by the training program:
1. Covers knowledge, skills, and competencies comparable to the national education standards established for a specific EMCT classification level;
2. Prepares a student for:
   a. A national certification organization examination for the specific EMCT classification level, or
   b. A standardized certification test under the state certification process;
3. Has no more than 24 students enrolled in each session of the course; and
4. Has a minimum course length of:
   a. For an EMT certification course, 130 hours;
   b. For an AEMT certification course, 244 hours, including:
      i. A minimum of 100 contact hours of didactic instruction and practical skills training, and
      ii. A minimum of 144 contact hours of clinical training and field training; and
   c. For a Paramedic certification course, 1000 hours, including:
      i. A minimum of 500 contact hours of didactic instruction and practical skills training, and
      ii. A minimum of 500 contact hours of clinical training and field training.

B. A training program director shall ensure that, for an AEMT certification course or a Paramedic certification course, a student has one of the following:
1. Current certification from the Department as an EMT or higher EMCT classification level,

2. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program, or
3. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level.

C. A training program director shall ensure that for a course to prepare an EMT-I(99) for Paramedic certification:

1. A student has current certification from the Department as an EMT-I(99);
2. The course covers the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov;
3. No more than 24 students are enrolled in each session of the course;
4. The minimum course length is 600 hours, including:
   a. A minimum of 220 contact hours of didactic instruction and practical skills training, and
   b. A minimum of 380 contact hours of clinical training and field training; and
5. A minimum of 60 contact hours of training in anatomy and physiology are completed by the student:
   a. As a prerequisite to the course,
   b. As preliminary instruction completed at the beginning of the course session before the didactic instruction required in subsection (C)(4)(a) begins, or
   c. Through integration of the anatomy and physiology material with the units of instruction required in subsection (C)(4).

D. A training program director shall ensure that for an EMT refresher course:

1. A student has one of the following:
   a. Current certification from the Department as an EMT or higher EMCT classification level,
   b. Documentation of completion of prior training in an EMT course or a course for a higher EMCT classification level provided by a training program certified by the Department or an equivalent training program,
   c. Documentation of current registration in a national certification organization at the EMT classification level or higher EMCT classification level, or
   d. Documentation from a national certification organization requiring the student to complete the EMT refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;
3. The EMT refresher course covers:
   a. The knowledge, skills, and competencies in the national education standards established at the EMT classification level; or
   b. Until the following dates, the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov:
      i. March 31, 2015, for a student who has documentation from a national certification organization of registration at the EMT classification level or higher EMCT classification level that expired on or before March 31, 2011;
      ii. March 31, 2016, for a student who has documentation from a national certification organization of registration at the EMT classification level or higher EMCT classification level that expired between April 1, 2011 and March 31, 2012; and
      iii. December 31, 2017, for a student who is not registered by a national certification organization;
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 24 contact hours.

E. A training program authorized to provide an EMT refresher course may administer a refresher challenge examination covering materials included in the EMT refresher course to an individual eligible for admission into the EMT refresher course.

F. A training program director shall ensure that for an ALS refresher course:

1. A student has one of the following:
   a. Current certification from the Department as an AEMT, EMT-I(99), or Paramedic;
   b. Documentation of completion of a prior training course, at the AEMT classification level or higher, provided by a training program certified by the Department or an equivalent training program;
   c. Documentation of current registration in a national certification organization at the AEMT or Paramedic classification level; or
   d. Documentation from a national certification organization requiring the student to complete the ALS refresher course to be eligible to apply for registration in the national certification organization;
2. A student has documentation of current certification in:
   a. Adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs, and
   b. For a student who has current certification as an EMT-I(99) or higher level of EMCT classification, advanced emergency cardiac life support;
3. The ALS refresher course covers:
   a. For a student who has current certification as an AEMT or documentation of completion of prior training at an AEMT classification level, the knowledge, skills, and competencies in the national education standards established for an AEMT;
   b. For a student who has current certification as an EMT-I(99), the knowledge, skills, and competencies established according to A.R.S. § 36-2204 for an EMT-I(99) as of the effective date of this Section and available through the Department at www.azdhs.gov;
   c. For a student who has current certification as a Paramedic or documentation of completion of prior training at a Paramedic classification level, the knowledge, skills, and competencies in the national education standards established for a Paramedic; and
   d. Until the following dates, the knowledge, skills, and competencies established according to A.R.S. § 36-2204 and available through the Department at www.azdhs.gov:
      i. March 31, 2015, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired on or before March 31, 2011;
      ii. March 31, 2016, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired between April 1, 2011 and March 31, 2012; iii. March 31, 2017, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and registration from a national certification organization that expired between April 1, 2012 and March 31, 2013; and
      iv. December 31, 2017, for a student who has documentation of completion of prior training at a level between EMT-I(99) and Paramedic and is not registered by a national certification organization;
4. No more than 32 students are enrolled in each session of the course; and
5. The minimum course length is 48 contact hours.

G. A training program authorized to provide an ALS refresher course may administer a refresher challenge examination covering materials included in the ALS refresher course to an individual eligible for admission into the ALS refresher course.

R9-25-306. Training Program Notification and Recordkeeping (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. At least 10 days before the start date of a course session, a training program certificate holder shall submit to the Department the following information in a Department-provided format:
1. Identification of the training program;
2. Identification of the course;
3. The name of the training program medical director;
4. The name of the training program director;
5. The name of the course session's lead instructor;
6. The course session start date and end date;
7. The physical location at which didactic training and practical skills training will be provided;
8. The days of the week and times of each day during which didactic training and practical skills training will be provided;
9. The number of clock hours of didactic training and practical skills training;
10. If applicable, the number of hours of clinical training and field training included in the course session;
11. The date, start time, and location of the final examination for the course;
12. Attestation that the lead instructor is qualified under R9-25-304(A)(4)(a); and
13. The name and signature of the chief administrative officer or program director and the date signed.

B. The Department shall review the information submitted according to subsection (A) and, within five days after receiving the information:
1. Approve a course session, issue an identifying number to the course session, and notify the training program certificate holder of the approval and identifying number; or
2. Disapprove a course session that does not comply with requirements in this Article and notify the training program certificate holder of the disapproval.

C. A training program certificate holder shall ensure that:
1. No later than 10 days after the date a student completes all course requirements, the training program director submits to the Department the following information in a Department-provided format:
   a. Identification of the training program;
   b. The name of the training program director;
   c. Identification of the course and the start date and end date of the course session completed by the student;
   d. The name, date of birth, and mailing address of the student who completed the course;
   e. The date the student completed all course requirements;
   f. The score the student received on the final examination;
   g. Attestation that the student has met all course requirements;
   h. Attestation that all information submitted is true and accurate; and
   i. The signature of the training program director and the date signed; and
2. No later than 10 days after the date an individual passes a refresher challenge examination administered by the training program, the training program director submits to the Department the following information in a Department-provided format;
   a. Identification of the training program;
   b. Identification of the:
      i. Refresher challenge examination administered, and
      ii. Course for which the refresher challenge examination substitutes;
   c. The name of the training program medical director;
   d. The name of the training program director;
   e. The name, date of birth, and mailing address of the individual who passed the refresher challenge examination;

f. The date and location at which the refresher challenge examination was administered;
g. The score the individual received on the refresher challenge examination;
h. Attestation that the individual:
   i. Met the requirements for taking the refresher challenge examination, and
   ii. Passed the refresher challenge examination;
i. Attestation that all information submitted is true and accurate; and
j. The name and signature of the training program director and the date signed.

D. A training program certificate holder shall ensure that:
1. A record is established for each student enrolled in a course session, including;
   a. The student's name and date of birth;
   b. A copy of the student's enrollment agreement or contract;
   c. Identification of the course in which the student is enrolled;
   d. The start date and end date for the course session;
   e. Documentation supporting the student's eligibility to enroll in the course;
   f. Documentation that the student meets prerequisites for the course, established as specified in R9-25-304(A)(2)(c)(i);
   g. The student's attendance records;
   h. The student's clinical training records, if applicable;
   i. The student's field training records, if applicable;
   j. The student's grades;
   k. Documentation of the final examination for the course, including:
      i. A copy of each scored written test attempted or completed by the student, and
      ii. All forms used as part of the comprehensive practical skills test attempted or completed by the student; and
   l. A copy of the student's certificate of completion required in R9-25-304(F)(1);
2. A student record required in subsection (D)(1) is maintained for three years after the end date of a student's course session and provided to the Department at the Department's request;
3. A record is established for each individual to whom a refresher challenge examination is administered, including:
   a. The individual's name and date of birth;
   b. Identification of the refresher challenge examination administered to the individual;
   c. Documentation supporting the individual's eligibility for a refresher challenge examination;
   d. The date the refresher challenge examination was administered;
   e. Documentation of the refresher challenge examination, including:
      i. A copy of the scored written test attempted or completed by the individual, and
      ii. All forms used as part of the comprehensive practical skills test attempted or completed by the individual; and
   f. A copy of the individual's certificate of completion required in R9-25-304(F)(2); and
4. A record required in subsection (D)(3) is maintained for three years after the date the refresher challenge examination was administered and provided to the Department at the Department's request.

R9-25-307. Training Program Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(3) and (4) and 36-2204(1) and (3))

A. The Department may take an action listed in subsection (B) against a training program certificate holder who:
1. Violates the requirements in A.R.S. Title 36, Chapter 21.1 or 9 A.A.C. 25; or
2. Knowingly or negligently provides false documentation or information to the Department.

B. The Department may take the following action against a training program certificate holder:
1. After notice is provided according to A.R.S. Title 41, Chapter 6, Article 10, issue:

a. A letter of censure, or
b. An order of probation; or

2. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
   a. Suspend the training program certificate, or
   b. Decertify the training program.

ARTICLE 4. EMCT CERTIFICATION

R9-25-401. EMCT General Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (6), and (7))

A. Except as provided in R9-25-404(E) and R9-25-405, an individual shall not act as an EMCT unless the individual has current certification or recertification from the Department.

B. An EMCT shall act as an EMCT only:
1. As authorized under the EMCT's scope of practice as specified in Article 5 of this Chapter; and
2. For an EMCT required to have medical direction according to A.R.S. Title 36, Chapter 21.1 and R9-25-502, as authorized by the EMCT's administrative medical director under:
   a. Treatment protocols, triage protocols, and communication protocols approved by the EMCT's administrative medical director as specified in R9-25-201(E)(2); and
   b. Medical recordkeeping, medical reporting, and prehospital incident history report requirements approved by the EMCT's administrative medical director as specified in R9-25-201(E)(3)(b).

C. Except as provided in A.R.S. § 36-2211, the Department shall certify or re-certify an individual as an EMCT for a period of two years.

D. An individual whose EMCT certificate is expired shall not apply for recertification, except as provided in R9-25-404(A).

E. The Department shall comply with the confidentiality requirements in A.R.S. §§ 36-2220(E) and 36-2245(M).

R9-25-402. EMCT Certification and Recertification Requirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (6), and (7))

A. The Department shall not certify an EMCT if the applicant:
1. Is currently:
   a. Incarcerated for a criminal conviction,
   b. On parole for a criminal conviction,
   c. On supervised release for a criminal conviction, or
   d. On probation for a criminal conviction;
2. Within 10 years before the date of filing an application for certification required by this Article, has been convicted of any of the following crimes, or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated:
   a. 1st or 2nd degree murder;
   b. Attempted 1st or 2nd degree murder;
   c. Sexual assault;
   d. Attempted sexual assault;
   e. Sexual abuse of a minor;
   f. Attempted sexual abuse of a minor;
   g. Sexual exploitation of a minor;
   h. Attempted sexual exploitation of a minor;
   i. Commercial sexual exploitation of a minor;

j. Attempted commercial sexual exploitation of a minor;
k. Molestation of a child;
l. Attempted molestation of a child; or
m. A dangerous crime against children as defined in A.R.S. § 13-705;

3. Within five years before the date of filing an application for certification required by this Article, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than a misdemeanor involving moral turpitude or a felony listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated;
4. Within five years before the date of filing an application for certification required by this Article, has had EMCT certification or recertification revoked in this state or certification, recertification, or licensure at an EMCT classification level revoked in any other state or jurisdiction; or
5. Knowingly provides false information in connection with an application required by this Article.

B. The Department shall not re-certify an EMCT, if:

1. While certified, the applicant has been convicted of a crime listed in snbsection (A)(2), or any similarly defined crimes in this state or in any other state or jurisdiction, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. The applicant knowingly provides false information in connection with an application required by this Article.

C. The Department shall make probation a condition of EMCT certification if, within two years before the date of filing an application under R9-25-403, an applicant has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.

D. Except as provided in subsection (E), the Department shall make probation a condition of EMCT recertification if an applicant:

1. Is currently:
   a. Incarcerated for a criminal conviction,
   b. On parole for a criminal conviction,
   c. On supervised release for a criminal conviction, or
   d. On probation for a criminal conviction; or
2. Within five years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor involving moral turpitude or a felony in this state or any other state or jurisdiction, other than those listed in subsection (A)(2), unless the conviction has been absolutely discharged, expunged, or vacated.

E. As specified in R9-25-409, the Department may make probation a condition of EMCT recertification if an applicant, within two years before the date of filing an application under R9-25-404, has been convicted of a misdemeanor in this state or in any other state or jurisdiction, involving:

1. Possession, use, administration, acquisition, sale, manufacture, or transportation of an intoxicating liquor, dangerous drug, or narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated; or
2. Driving or being in physical control of a vehicle while under the influence of an intoxicating liquor, a dangerous drug, or a narcotic drug, as defined in A.R.S. § 13-3401, unless the conviction has been absolutely discharged, expunged, or vacated.

F. If the Department makes probation a condition of EMCT certification or recertification, the Department shall fix the period and terms of probation that will:

1. Protect the public health and safety, and
2. Rehabilitate and educate the applicant.

R9-25-403. Application Requirements for EMCT Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (G) and 36-2204(1) and (6))

A. An individual may apply for initial EMCT certification if:
1. The individual is at least 18 years of age;
2. The individual complies with the requirements in A.R.S. § 41-1080;
3. The individual is not ineligible under R9-25-402; and
4. One of the following applies to the individual:
   a. The individual has not previously applied for certification from the Department or has withdrawn an application for certification;
   b. An application for certification submitted by the individual was denied by the Department two or more years before the present date;
   c. Except as provided in R9-25-404(A)(2) or (3), the individual's certification as an EMCT is expired;
   d. The individual's certification as an EMCT was revoked by the Department five or more years before the present date; or
   e. The individual has current certification as an EMCT and is applying for certification at a different classification level of EMCT.

B. An applicant for initial EMCT certification shall submit to the Department an application in a Department-provided format, including:
1. A form containing:
   a. The applicant's name, address, telephone number, email address, date of birth, gender, and Social Security number;
   b. The level of EMCT certification being requested;
   c. Responses to questions addressing the applicant's criminal history according to R9-25-402(A)(1) through (3) and (C);
   d. Whether the applicant has within the five years before the date of the application had:
      i. EMCT certification or recertification revoked in Arizona; or
      ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
   e. Attestation that all information required as part of the application has been submitted and is true and accurate; and
   f. The applicant's signature or electronic signature and date of signature;
2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;
3. For each affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form and supporting documentation;
4. If applicable, a copy of certification, recertification, or licensure at an EMCT classification level issued to the applicant in another state or jurisdiction;
5. A copy of one of the following for the applicant:
   a. U.S. passport, current or expired;
   b. Birth certificate;
   c. Naturalization documents; or
   d. Documentation of legal resident alien status; and
6. One of the following:
   a. Either:
      i. A certificate of completion showing that within two years before the date of the application, the applicant completed statewide standardized training; and
      ii. A statewide standardized certification test; or

b. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification.

B. The Department shall approve or deny an application for initial EMCT certification according to Article 12 of this Chapter.

C. If the Department denies an application for initial EMCT certification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-404. Application Requirements for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (3), (4), and (6), (B), and (H) and 36-2204(1), (4), and (6))

A. An individual may apply for recertification at the same level of EMCT certification held or at a lower level of EMCT certification:

1. Within 90 days before the expiration date of the individual's current EMCT certification;
2. Within the 30-day period after the expiration date of the individual's EMCT certification, as provided in subsection (E); or
3. Within the extension time period granted under R9-25-405.

B. To apply for recertification, an applicant shall submit to the Department an application, in a Department-provided format, including:

1. A form containing:
   a. The applicant's name, address, telephone number, email address, date of birth, and Social Security number;
   b. The applicant's current certification number;
   c. Responses to questions addressing the applicant's criminal history according to R9-25-402(B), (D), and (E);
   d. Whether the applicant has within the five years before the date of the application had:
      i. EMCT certification or recertification revoked in Arizona; or
      ii. Certification, recertification, or licensure at an EMCT classification level revoked in another state or jurisdiction;
   e. An indication of the level of EMCT certification held currently or within the past 30 days and of the level of EMCT certification for which recertification is requested;
   f. Attestation that all information required as part of the application has been submitted and is true and accurate; and
   g. The applicant's signature or electronic signature and date of signature;
2. For each affirmative response to a question addressing the applicant's criminal history required in subsection (B)(1)(c), a detailed explanation on a Department-provided form and supporting documentation;
3. For an affirmative response to subsection (B)(1)(d), a detailed explanation on a Department-provided form; and
4. For an application submitted within 30 days after the expiration date of EMCT certification, a nonrefundable certification extension fee of $150.

C. In addition to the application in subsection (B), an applicant for EMCT recertification shall submit one of the following to the Department:

1. A certificate of course completion issued by the training program director under R9-25-304(F) showing that within two years before the date of the application, the applicant completed either the applicable refresher course or applicable refresher challenge examination;
2. Documentation of current registration in a national certification organization at the applicable or higher level of EMCT classification; or
3. Attestation on a Department-provided form that the applicant:
   a. Has documentation of current certification in adult, pediatric, and infant cardiopulmonary resuscitation through instruction consistent with American Heart Association recommendations for emergency cardiovascular care by EMCTs;

b. For EMT-I(99) recertification or Paramedic recertification, has documentation of current certification in advanced emergency cardiac life support;
c. Has documentation of having completed within the previous two years the following number of hours of continuing education in topics that are consistent with the content of the applicable refresher course:
   i. For EMT recertification, a minimum of 24 hours;
   ii. For AEMT recertification, EMT-I(99) recertification, or Paramedic recertification, a minimum of 48 hours; and
   iii. Included in the hours required in subsections (C)(3)(c)(i) or (ii), as applicable, a minimum of 5 hours in pediatric emergency care; and
d. For EMT recertification, has functioned in the capacity of an EMT for at least 240 hours during the previous two years.

D. An applicant who submits an attestation under subsection (C)(3) shall maintain the applicable documentation for at least three years after the date of the application.

E. If an individual submits an application for recertification, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:
1. Was authorized to act as an EMCT during the period between the expiration date of the individual's EMCT certification and the date the application was submitted, and
2. Is authorized to act as an EMCT until the Department makes a final determination on the individual's application for recertification.

F. If an individual does not submit an application for recertification before the expiration date of the individual's EMCT certification or, with a certification extension fee, within 30 days after the expiration date of the individual's EMCT certification, the individual:
1. Is not an EMCT,
2. Was not authorized to act as an EMCT during the 30-day period after the expiration date of the individual's EMCT certification, and
3. May submit an application to the Department for initial EMCT certification according to R9-25-403.

G. The Department shall approve or deny an application for recertification according to Article 12 of this Chapter.

H. If the Department denies an application for recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

I. The Department may deny, based on failure to meet the standards for recertification in A.R.S. Title 36, Chapter 21.1 and this Article, an application submitted with a certification extension fee.

R9-25-405. Extension to File an Application for EMCT Recertification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G) and 36-2204(1), (4), (5), and (7))

A. Before the expiration of a current certificate, an EMCT who is unable to meet the recertification requirements in R9-25-404 because of personal or family illness, military service, or authorized federal or state emergency response deployment may apply to the Department in writing for an extension of time to file for recertification by submitting:
1. The following information in a Department-provided format:
   a. The EMCT's name, address, telephone number, and email address;
   b. The EMCT's current certification number;
   c. The reason for requesting the extension; and
   d. The EMCT's signature or electronic signature and date of signature; and
2. For an exemption based on military service or authorized federal or state emergency response deployment, a copy of the EMCT's military orders or documentation of authorized federal or state emergency response deployment.

B. The Department may grant an extension of time to file for recertification:

1. For personal or family illness, for no more than 180 days; or
2. For each military service or authorized federal or state emergency response deployment, for the term of service or deployment plus 180 days.

C. An individual applying for or granted an extension of time to file for recertification:
1. Remains certified according to A.R.S. § 41-1092.11 during the extension period, and
2. Shall submit an application for recertification according to R9-25-404.

D. An individual who does not meet the recertification requirements in R9-25-404 within the extension period or has the application for recertification denied by the Department:
1. Is not an EMCT, and
2. May submit an application to the Department for initial EMCT certification according to R9-25-403.

E. The Department shall approve or deny a request for an extension to file for EMCT recertification according to Article 12 of this Chapter.

F. If the Department denies a request for an extension to file for EMCT recertification, the applicant may request a hearing according to A.R.S. Title 41, Chapter 6, Article 10.

R9-25-406. Requirements for Downgrading of Certification (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), and (G) and 36-2204(1) and (6))

An individual who holds current EMCT certification at a classification level higher than EMT and who is not under investigation according to A.R.S. § 36-2211 may apply for:
1. Continued certification at a lower EMCT classification level for the remainder of the certification period by submitting to the Department:
   a. A written request containing:
      i. The EMCT's name, address, email address, telephone number, date of birth, and Social Security number;
      ii. The lower EMCT classification level requested;
      iii. Attestation that the applicant has not committed an act or engaged in conduct that would warrant revocation of a certificate under A.R.S. § 36-2211;
      iv. Attestation that all information snbmitted is true and accurate; and
      v. The applicant's signature or electronic signature and date of signature; and
   b. Either:
      i. A written statement from the EMCT's administrative medical director attesting that the EMCT is able to perform at the lower EMCT classification level requested; or
      ii. If applying for continued certification as an EMT, an Arizona EMT refresher certificate of completion or an Arizona EMT refresher challenge examination certificate of completion signed by the training program director designated for the Arizona EMT refresher course; or
2. Recertification at a lower EMCT classification level according to R9-25-404.

R9-25-407. Notification Reqnirements (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), and (A)(4), 36-2204(1) and (6), and 36-2211)

A. No later than 30 days after the date an EMCT's name legally changes, the EMCT shall submit to the Department:
1. A completed form provided by the Department containing:
   a. The name under which the EMCT is currently certified by the Department;
   b. The EMCT's address, telephone number, and Social Security number; and
   c. The EMCT's new name; and
2. Documentation showing that the name has been legally changed.

B. No later than 30 days after the date an EMCT's address changes, the EMCT shall submit to the Department a completed form provided by the Department containing:
1. The EMCT's name, telephone number, and Social Security number; and

2. The EMCT's new address.

C. An EMCT shall notify the Department in writing no later than 10 days after the date the EMCT:
   1. Is incarcerated or is placed on parole, supervised release, or probation for any criminal conviction;
   2. Is convicted of:
      a. A crime specified in R9-25-402(A)(2),
      b. A misdemeanor involving moral turpitude,
      c. A felony in this state or any other state or jurisdiction, or
      d. A misdemeanor specified in R9-25-402(E);
   3. Has registration revoked or suspended by a national certification organization; or
   4. Has certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

R9-25-408. Unprofessional Conduct; Physical or Mental Incompetence; Gross Incompetence; Gross Negligence (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G), 36-2204(1), (6), and (7), and 36-2211)

A. For purposes of A.R.S. § 36-2211(A)(1), unprofessional conduct is an act or omission made by an EMCT that is contrary to the recognized standards or ethics of the Emergency Medical Technician profession or that may constitute a danger to the health, welfare, or safety of a patient or the public, including:
   1. Impersonating an EMCT of a higher level of certification or impersonating a health professional as defined in A.R.S. § 32-3201;
   2. Permitting or allowing another individual to use the EMCT's certification for any purpose;
   3. Aiding or abetting an individual who is not certified according to this Chapter in acting as an EMCT or in representing that the individual is certified as an EMCT;
   4. Engaging in or soliciting sexual relationships, whether consensual or non-consensual, with a patient while acting as an EMCT;
   5. Physically or verbally harassing, abusing, threatening, or intimidating a patient or another individual while acting as an EMCT;
   6. Making false or materially incorrect entries in a medical record or willful destruction of a medical record;
   7. Failing or refusing to maintain adequate records on a patient;
   8. Soliciting or obtaining monies or goods from a patient by fraud, deceit, or misrepresentation;
   9. Aiding or abetting an individual in fraud, deceit, or misrepresentation in meeting or attempting to meet the application requirements for EMCT certification or EMCT recertification contained in this Article, including the requirements established for:
      a. Completing and passing a course provided by a training program; and
      b. The national certification organization examination process and national certification organization registration process;
   10. Providing false information or making fraudulent or untrue statements to the Department or about the Department during an investigation conducted by the Department;
   11. Being incarcerated or being placed on parole, supervised release, or probation for any criminal conviction;
   12. Being convicted of a misdemeanor identified in R9-25-402(E), which has not been absolutely discharged, expunged, or vacated;
   13. Having national certification organization registration revoked or suspended by the national certification organization for material noncompliance with national certification organization rules or standards; and
   14. Having certification, recertification, or licensure at an EMCT classification level revoked or suspended in another state or jurisdiction.

B. Under A.R.S. § 36-2211, physical or mental incompetence of an EMCT is the EMCT's lack of physical or mental ability to provide emergency medical services as required under this Chapter.

C. Under A.R.S. § 36-2211 gross incompetence or gross negligence is an EMCT's willful act or willful omission of an act that is made in disregard of an individual's life, health, or safety and that may cause death or injury.

R9-25-409. Enforcement Actions (Authorized by A.R.S. §§ 36-2202(A)(2), (A)(3), (A)(4), (A)(6), and (G), 36-2204(1), (6), and (7), and 36-2211)

A. If the Department determines that an applicant or EMCT is not in substantial compliance with applicable laws and rules, under A.R.S. §§ 36-2204 or 36-2211, the Department may:

1. Take the following action against an applicant or EMCT:
   a. After notice is provided according to A.R.S. § 36-2211 and, if applicable, A.R.S. Title 41, Chapter 6, Article 10, issue:
      i. A decree of censure to the EMCT, or
      ii. An order of probation to the EMCT; or
   b. After notice and opportunity to be heard is provided according to A.R.S. Title 41, Chapter 6, Article 10:
      i. Deny an application,
      ii. Suspend the EMCT's certificate, or
      iii. Revoke the EMCT's certificate; and
2. Assess civil penalties against the EMCT.

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

1. Prior disciplinary actions;
2. The time interval since a prior disciplinary action, if applicable;
3. The applicant's or EMCT's motive;
4. The applicant's or EMCT's pattern of conduct;
5. The number of offenses;
6. Whether the applicant or EMCT failed to comply with instructions from the Department;
7. Whether interim rehabilitation efforts were made by the applicant or EMCT;
8. Whether the applicant or EMCT refused to acknowledge the wrongful nature of the misconduct;
9. Whether the applicant or EMCT made timely and good-faith efforts to rectify the consequences of the misconduct;
10. The submission of false evidence, false statements, or other deceptive practices during an investigation or disciplinary process;
11. The vulnerability of a patient or other victim of the applicant's or EMCT's conduct, if applicable; and
12. How much control the applicant or EMCT had over the processes or situation leading to the misconduct.

ATTACHMENT B

Statutory Authority for the Rules in 9 A.A.C. 25, Articles 3 and 4

36-136. Powers and duties of director; compensation of personnel; rules

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of the state.

6. Exercise general supervision over all matters relating to sanitation and health throughout the state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of the state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of the state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of the state, the director may inspect any person or property in transportation through the state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

D. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

E. The compensation of all personnel shall be as determined pursuant to section 38-611.

F. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

G. Notwithstanding subsection H, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

H. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum

standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or

vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

I. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

J. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

K. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

L. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

M. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection H of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

N. Until the department adopts exemptions by rule as required by subsection H, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection H of this section.

36-2202. <u>Duties of the director; qualifications of medical director</u>

A. The director shall:

1. Appoint a medical director of the emergency medical services and trauma system.

2. Adopt standards and criteria for the denial or granting of certification and recertification of emergency medical care technicians. These standards shall allow the department to certify qualified

emergency medical care technicians who have completed statewide standardized training required under section 36-2204, paragraph 1 and a standardized certification test required under section 36-2204, paragraph 2 or who hold valid certification with a national certification organization. Before the director may consider approving a statewide standardized training or a standardized certification test, or both, each of these must first be recommended by the medical direction commission and the emergency medical services council to ensure that the standardized training content is consistent with national education standards and that the standardized certification tests examines comparable material to that examined in the tests of a national certification organization.

3. Adopt standards and criteria that pertain to the quality of emergency care pursuant to section 36-2204.

4. Adopt rules necessary to carry out this chapter. Each rule shall identify all sections and subsections of this chapter under which the rule was formulated.

5. Adopt reasonable medical equipment, supply, staffing and safety standards, criteria and procedures for issuance of a certificate of registration to operate an ambulance.

6. Maintain a state system for recertifying emergency medical care technicians, except as otherwise provided by section 36-2202.01, that is independent from any national certification organization recertification process. This system shall allow emergency medical care technicians to choose to be recertified under the state or the national certification organization recertification system subject to subsection H of this section.

B. Emergency medical technicians who choose the state recertification process shall recertify in one of the following ways:

1. Successfully completing an emergency medical technician refresher course approved by the department.

2. Successfully completing an emergency medical technician challenge course approved by the department.

3. For emergency medical care technicians who are currently certified at the emergency medical technician level by the department, attesting on a form provided by the department that the applicant holds a valid and current cardiopulmonary resuscitation certification, has and will maintain documented proof of a minimum of twenty-four hours of continuing medical education within the last two years consistent with department rules and has functioned in the capacity of an emergency medical technician for at least two hundred forty hours during the last two years.

C. After consultation with the emergency medical services council the director may authorize pilot programs designed to improve the safety and efficiency of ambulance inspections for governmental or quasi-governmental entities that provide emergency medical services in this state.

D. The rules, standards and criteria adopted by the director pursuant to subsection A, paragraphs 2, 3, 4 and 5 of this section shall be adopted in accordance with title 41, chapter 6, except that the director may adopt on an emergency basis pursuant to section 41-1026 rules relating to the regulation of ambulance services in this state necessary to protect the public peace, health and safety in advance of adopting rules, standards and criteria as otherwise provided by this subsection.

E. The director may waive the requirement for compliance with a protocol adopted pursuant to section 36-2205 if the director determines that the techniques, drug formularies or training makes the protocol inconsistent with contemporary medical practices.

F. The director may suspend a protocol adopted pursuant to section 36-2205 if the director does all of the following:

1. Determines that the rule is not in the public's best interest.

2. Initiates procedures pursuant to title 41, chapter 6 to repeal the rule.

3. Notifies all interested parties in writing of the director's action and the reasons for that action. Parties interested in receiving notification shall submit a written request to the director.

G. To be eligible for appointment as the medical director of the emergency medical services and trauma system, the person shall be qualified in emergency medicine and shall be licensed as a physician in one of the states of the United States.

H. Applicants for certification shall apply to the director for certification. Emergency medical care technicians shall apply for recertification to the director every two years. The director may extend the expiration date of an emergency medical care technician's certificate for thirty days. The department shall establish a fee for this extension by rule. Emergency medical care technicians shall pass an examination administered by the department as a condition for recertification only if required to do so by the advanced life support base hospital's medical director or the emergency medical care technician's medical director.

I. The medical director of the emergency medical services and trauma system is exempt from title 41, chapter 4, articles 5 and 6 and is entitled to receive compensation pursuant to section 38-611, subsection A.

J. The standards, criteria and procedures adopted by the director pursuant to subsection A, paragraph 5 of this section shall require that ambulance services serving a rural or wilderness certificate of necessity area with a population of less than ten thousand persons according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (b) staffing an ambulance while transporting a patient and that ambulance services serving a population of ten thousand persons or more according to the most recent United States decennial census have at least one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a) and one ambulance attendant as defined in section 36-2201, paragraph 6, subdivision (a), (c), (d) or (e) staffing an ambulance while transporting a patient.

K. If the department determines there is not a qualified administrative medical director, the department shall ensure the provision of administrative medical direction for an emergency medical technician if the emergency medical technician meets all of the following criteria:

1. Is employed by a nonprofit or governmental provider employing less than twelve full-time emergency medical technicians.

2. Stipulates to the inability to secure a physician who is willing to provide administrative medical direction.

3. Stipulates that the provider agency does not provide administrative medical direction for its employees.

36-2204. Medical control

The medical director of the statewide emergency medical services and trauma system, the emergency medical services council and the medical direction commission shall recommend to the director the following standards and criteria that pertain to the quality of emergency patient care:

1. Statewide standardized training, certification and recertification standards for all classifications of emergency medical care technicians.

2. A standardized and validated testing procedure for all classifications of emergency medical care technicians.

3. Medical standards for certification and recertification of training programs for all classifications of emergency medical care technicians.

4. Standardized continuing education criteria for all classifications of emergency medical care technicians.

5. Medical standards for certification and recertification of certified emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.

6. Standards and mechanisms for monitoring and ongoing evaluation of performance levels of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and approval of physicians providing medical control or medical direction for any classification of emergency medical care technicians who are required to be under medical control or medical direction.

7. Objective criteria and mechanisms for decertification of all classifications of emergency medical care technicians, emergency receiving facilities and advanced life support base hospitals and for disapproval of physicians providing medical control or medical direction for any classification of emergency care technicians who are required to be under medical control or medical direction.

8. Medical standards for nonphysician prehospital treatment and prehospital triage of patients requiring emergency medical services.

9. Standards for emergency medical dispatcher training, including prearrival instructions. For the purposes of this paragraph, "emergency medical dispatch" means the receipt of calls requesting emergency medical services and the response of appropriate resources to the appropriate location.

10. Standards for a quality assurance process for components of the statewide emergency medical services and trauma system, including standards for maintaining the confidentiality of the information considered in the course of quality assurance and the records of the quality assurance activities pursuant to section 36-2403.

11. Standards for ambulance service and medical transportation that give consideration to the differences between urban, rural and wilderness areas.

12. Standards to allow an ambulance to transport a patient to a health care institution that is licensed as a special hospital and that is physically connected to an emergency receiving facility.

36-2209. Powers and duties of the director

A. The director shall:

1. Appoint and define the duties and prescribe the terms of employment of all employees of the bureau.

2. Adopt rules necessary for the operation of the bureau and for carrying out the purposes of this chapter.

3. Cooperate with and assist the personnel of emergency receiving facilities and other health care institutions in preparing a plan to be followed by these facilities and institutions in the event of a major disaster.

4. Cooperate with the state director of emergency management when a state of emergency or a state of war emergency has been declared by the governor.

B. The director may:

1. Request the cooperation of utilities, communications media and public and private agencies to aid and assist in the implementation and maintenance of a statewide emergency medical services system.

2. Enter into contracts and agreements with any local governmental entity, agency, facility or group that provides a similar program of emergency medical services in a contiguous state.

3. Enter into contracts and agreements for the acquisition and purchase of any equipment, tools, supplies, materials and services necessary in the administration of this chapter.

4. Enter into contracts with emergency receiving facilities, governmental entities, emergency rescue services and ambulance services, and the director may establish emergency medical services, including emergency receiving facilities, if necessary to assure the availability and quality of these services.

5. Accept and expend federal funds and private grants, gifts, contributions and devises to assist in carrying out the purposes of this chapter. These funds do not revert to the state general fund at the close of a fiscal year.

6. Establish an emergency medical services notification system that uses existing telephone communications networks.

7. Contract with private telephone companies for the establishment of a statewide emergency reporting telephone number.

8. Authorize the testing entity to collect fees determined by the director. In determining fees for testing entities the director shall consider the fees required by national certification organizations.

36-2211. Grounds for censure, probation, suspension or revocation of emergency medical care technician certificate; proceedings; civil penalty; judicial review

A. The medical director of the emergency medical services and trauma system, on behalf of the director, may censure or place on probation an emergency medical care technician or suspend or revoke the certification issued to any emergency medical care technician pursuant to this article for any of the following causes:

1. Unprofessional conduct.

2. Conviction of, a plea of guilty or no contest to or admission in a court proceeding to the elements of a felony or of a misdemeanor involving moral turpitude during the time that a person is certified as an emergency medical care technician. The record of conviction or a copy of the record certified by the clerk of the court or by the judge by whom the person was sentenced is conclusive evidence of conviction.

3. Physical or mental incompetence to provide emergency medical services as an emergency medical care technician.

4. Gross incompetence or gross negligence in the provision of emergency medical services as an emergency medical care technician.

5. Wilful fraud or misrepresentation in the provision of emergency medical services as an emergency medical care technician or in the admission to that practice.

6. Use of any narcotic or dangerous drug or intoxicating beverage to an extent that the use impairs the ability to safely conduct the provision of emergency medical services as an emergency medical care technician.

7. The wilful violation of this chapter or the rules adopted pursuant to this chapter.

B. The medical director of the emergency medical services and trauma system on the medical director's own motion may investigate any evidence that appears to show the existence of any of the causes set forth in subsection A of this section. The medical director shall investigate the report under oath of any person that appears to show the existence of any of the causes set forth in subsection A of this section. Any person reporting pursuant to this section who provides the information in good faith is not subject to liability for civil damages as a result.

C. If, in the opinion of the medical director of the emergency medical services and trauma system, it appears the information is or may be true, the medical director shall request an informal interview with the emergency medical care technician. The interview shall be requested by the medical director in writing, stating the reasons for the interview and setting a date not less than ten days from the date of the notice for conducting the interview. The written request for an interview shall also state that if the medical director finds that cause exists for censure or probation or the suspension or revocation of the certificate the medical director may impose a civil penalty of not more than three hundred fifty dollars for each occurrence of cause as provided in subsection A of this section. The request for an interview shall also state that each day a cause for discipline exists constitutes a separate offense.

D. Following the investigation, including an informal interview if requested, and together with any mental, physical or professional competence examination as the medical director of the emergency medical services and trauma system deems necessary, the medical director may proceed in the following manner:

1. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section does not warrant censure or probation of the emergency medical care technician or suspension or revocation of a certificate, the medical director shall notify the emergency medical care technician and terminate the investigation.

2. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section does not warrant suspension or revocation of a certificate but does warrant censure or probation, the medical director may do either of the following:

(a) Issue a decree of censure.

(b) Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate and educate the emergency medical care technician. Failure to comply with any probation is cause for filing a complaint and holding a formal hearing as provided in paragraph 3 of this subsection.

3. If the medical director finds that the evidence obtained pursuant to subsections B and C of this section warrants suspension or revocation of a certificate issued under this article, or if the emergency medical care technician under investigation refuses to attend the informal interview authorized in subsection C of this section, a complaint shall be issued and formal proceedings shall be initiated. All proceedings pursuant to this paragraph shall be conducted pursuant to title 41, chapter 6, article 10.

E. If after a hearing as provided in this section any cause for censure, probation, suspension or revocation is found to exist, the emergency medical care technician is subject to censure or probation or suspension or revocation of the certificate or any combination of these for a period of time or permanently and under conditions as the medical director of the emergency medical services and trauma system deems appropriate.

F. In addition to other disciplinary action provided pursuant to this section, the medical director of the emergency medical services and trauma system may impose a civil penalty of not more than three hundred fifty dollars for each occurrence of cause as provided in subsection A of this section not to exceed twenty-five hundred dollars. Each day that cause for discipline exists constitutes a separate offense. All monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

G. Except as provided in section 41-1092.08, subsection H, final decisions of the medical director of the emergency medical services and trauma system are subject to judicial review pursuant to title 12, chapter 7, article 6.