

**DEPARTMENT OF ECONOMIC SECURITY**

Title 6, Chapter 6, Article 4, Application

**Amend:** R6-6-402, R6-6-404, R6-6-405

**Repeal:** R6-6-403

**Renumber:** R6-6-401, R6-6-402, R-6-405

**New Section:** R-6-401



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - REGULAR RULEMAKING

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 14, 2020

**SUBJECT: DEPARTMENT OF ECONOMIC SECURITY**  
Title 6, Chapter 6, Article 4 - Application

**Amend:** R6-6-402, R6-6-404, R6-6-405

**Repeal:** R6-6-403

**Renumber:** R6-6-401, R6-6-402, R-6-405

**New Section:** R-6-401

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**Summary:**

This regular rulemaking from the Department of Economic Security (Department) seeks to make changes to Title 6, Chapter 6, Article 4 regarding Application. The rules in this Article include Application for Admission to Services, Consent, Referrals from Juvenile Court, Eligibility under the Arizona Long Term Care System, and Documentation and Verification. The Department is proposing to amend these rules to clarify requirements, remove sections that are duplicative or do not pertain to this Article, conform to current practice, add definitions for the public to better understand the rules, streamline the application process, and lessen the documentation required to be submitted by the applicant. The Department is making changes in response to issues identified in a recent five-year review report (5YRR), which the Council approved in December 2015.

The Department received an exemption from the rulemaking moratorium on November 6, 2017.

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

Yes, the Department cites both general and specific statutory authority for these rules.

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

No, this rulemaking does not establish a new fee or contain a fee increase.

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

The Department did not rely on any study in conducting this rulemaking.

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

The purpose of this rulemaking is to add, amend, and repeal rules to conform to current practice and terminology, and to make the rules more clear, concise and understandable. The rules regard Application for Admission to Services, Consent, Referrals from Juvenile Court, Eligibility under ALTCS, and Documentation and Verification.

The Division anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no anticipation of increased costs because the primary changes made to the rule revolve around the process of applying as well as removing outdated language from the rule. There is no significant programmatic or membership change anticipate as a result of these changes. Consumers who apply to the Division and members of the public will benefit from this rulemaking because it will add, amend, and repeal rules to conform to current practices and terminology, and will make the rules more clear, concise, and understandable for improved quality of care.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

Consumers who apply to the Division and members of the public will benefit from this rulemaking because it will add, amend, and repeal rules to conform to current practices and terminology, and will make the rules more clear, concise, and understandable for improved quality of care.

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

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

Stakeholders are identified as the Division, consumers of the Division, and the general public.

All stakeholders are expected to benefit from the rulemaking as it makes the rules more clear, concise, and understandable.

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

The final rules have technical clarifying changes. These changes do not result in rules that are substantially different.

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

The Department did not receive any comments in conducting this rulemaking.

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

The rules under review do not require a permit or license.

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

Not applicable. There is no corresponding federal law.

11. **Conclusion**

As mentioned above, the Department is seeking to add, amend, and repeal rules to conform to current practice and terminology, and to make the rules more clear, concise and understandable. This is a regular rulemaking that would be effective 60 days after the agency files the NFR with the Secretary of State pursuant to A.R.S. § 41-1032(A). Council staff recommends approval for this rulemaking.



DEPARTMENT OF ECONOMIC SECURITY

*Your Partner For A Stronger Arizona*

Douglas A. Ducey  
Governor

Cara M. Christ, MD, MS  
Interim Director

May 15, 2020

Ms. Nicole Sornsin  
Chairperson, Governor's Regulatory Review Council  
Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Dear Ms. Sornsin:

The attached 6AAC6 Article 4 final rulemaking package is respectfully submitted for review and approval by the Council. The following information is provided for use in reviewing the rulemaking package:

**Close of Record Date:** The rulemaking record closed on February 7, 2020, following the public comment period. This rulemaking package is being submitted within the 120-day timeframe provided by A.R.S. § 41-1024(B). The Arizona Department of Economic Security (Department) scheduled and hosted an oral proceeding on February 6, 2020, at which there were no attendees.

**General and Specific Statutes Authorizing the Rules; Definitions of Terms Contained in Statutes or Other Rules:** General Statute: A.R.S. § 41-1954(A)(3). Implementing Statutes: A.R.S. §§ 36-552, 36-554, and 41-1954(A)(1)(h).

**Relation of the Rulemaking to a Five-Year Review Report:** This rulemaking is in response to a Five-Year Review Report approved by the Council on December 1, 2015.

**New Fee or Fee Increase:** This rulemaking does not establish a new fee or increase an existing fee.

**Effective Date:** The Department is requesting an effective date of 60 days from filing with the Secretary of State under A.R.S. § 41-1032(A).

**Material Incorporated by Reference:** No material is incorporated by reference in this rulemaking.

**Certification Regarding Studies:** The Department certifies that the preamble accurately discloses that no study relevant to the rules was reviewed and was not relied on in the Department's evaluation of or justification of the rules.

Ms. Nicole Sornsin  
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Joint Legislative Budget Committee (JLBC) Certification: The Department was not required to make a certification to JLBC because the rule does not require any new full-time employees.

List of Documents Enclosed:

- a. Notice of Final Rulemaking including preamble, table of contents for the rulemaking, and rule text;
- b. Economic Impact statement;
- c. Current rules;
- d. Applicable statutes; and
- e. Governor's Office approval.

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

Sincerely,



Wesley Fletcher for

Cara M. Christ, MD  
Interim Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY

DEVELOPMENTAL DISABILITIES

PREAMBLE

<u>1.</u>	<u>Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
	R6-6-401	ReNUMBER
	R6-6-401	New Section
	R6-6-402	ReNUMBER
	R6-6-402	Amend
	R6-6-403	Repeal
	R6-6-404	Amend
	R6-6-405	ReNUMBER
	R6-6-405	Amend

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

Authorizing statute: A.R.S. §§ 36-554(C)(6) and 41-1954(A)(3)

Implementing statute: A.R.S. §§ 36-552, 36-554, and 41-1954(A)(1)(h)

3. The effective date of the rule:

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

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

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

Not applicable

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

Not applicable

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 5, January 3, 2020

Notice of Proposed Rulemaking: 26 A.A.R.17, January 3, 2020

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

Name: Christian J. Eide

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 1292

Phoenix, AZ 85005

or

Department of Economic Security

1789 W. Jefferson, Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-9199

Fax: (602) 542-6000

E-mail: ceide@azdes.gov

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

Article 4 contains rules on Application, including Application for Admission to Services, Consent, Referrals from Juvenile Court, Eligibility under the Arizona Long Term Care System (ALTCS), and Documentation and Verification. The purpose of the rulemaking is to add, amend, and repeal rules to conform to current practice and terminology, and to make the rules more clear, concise, and understandable. The Department last amended this Article in 1993. A Five-Year Review Report for Chapter 6 was approved by the Governor's Regulatory Review Council on December 1, 2015.

- The Department is adding a new "Definitions" section to improve understanding and clarification within the Article.
- The Department is amending the current R6-6-401, "Application for Admission to Services," to clarify existing language and remove the requirement for disclosure of the applicant's social security number, which is inconsistent with the Federal Privacy Act of 1974, 5 U.S.C. 552a.
- The Department is repealing the current R6-6-403, "Referrals from Juvenile Court," because this provision is duplicative of A.R.S. §§ 8-242, 36-559(D), and 36-560(F).
- The Department is repealing the current R6-6-404, "Eligibility under ALTCS," because it does not address the application requirements, and therefore, does not belong in this Article.
- The Department is amending the current R6-6-405, "Documentation and

Verification,” to update the language and to conform to Department policy.

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

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

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

Not applicable

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

The Division anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no anticipation of increased costs because the primary changes made to the rule revolve around the process of applying, as well as removing outdated language from the rule. There is no significant programmatic or membership change anticipated as a result of these changes.

The rulemaking does not impose any obligation on the individual or responsible person to accept or participate in services without informed consent. Consumers who apply to the Division and members of the public will benefit from this rulemaking because it will add, amend, and repeal rules to conform to current practices and terminology, and will make the rules more clear, concise, and understandable for improved quality of care.

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

R6-60402(C)(f) - The semicolon at the end of the sentence was marked for deletion, new text "and" was removed, and a period was added to mark the end of the sentence.

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

The Department received no comments on this rulemaking.

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

No other matters are prescribed.

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

This rule does not require a permit.

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

There are no federal laws applicable to this rulemaking.

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

No analysis was submitted.

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

None

**14. Whether the rule was previously made, amended or repealed as an emergency rule.**

**If so, cite the notice published in the *Register* as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable

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

**TITLE 6. ECONOMIC SECURITY**  
**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY**  
**DEVELOPMENTAL DISABILITIES**  
**ARTICLE 4. APPLICATION**

Section

R6-6-401.            Definitions

~~R6-6-401.~~ R6-6-402. ~~Application for Admission to Services~~ the Division of Developmental  
Disabilities Services

~~R6-6-403.~~            ~~Referrals from Juvenile Court~~

~~R6-6-405.~~ R6-6-403. Documentation and Verification

R6-6-404.            Eligibility under ALTCS

## ARTICLE 4. APPLICATION

### R6-6-401. Definitions

In addition to the definitions in Article 1 of this Chapter, the following definition applies to this Article:

“Lawful presence” means the same as in R6-6-301.

### R6-6-401. R6-6-402. Application for Admission to Services the Division of Developmental Disabilities Services

A. To apply for Division services, an Applicant shall:

1. File with the Division a written Complete, sign, and submit an application on a the form prescribed by and available from or by the method provided by the Division at no charge,;

2. Participate in a face-to-face interview with a designated Department employee, if requested by the Division or the applicant, and

3. Submit information and documents to support the application, as required by the Division.

B. Upon application, the applicant agrees to abide by federal and state statutes and regulations and Department policy.

B. C. The application form shall contain, the following information at a minimum:

1. With respect to the person to receive services applying:

a. Name, address, and telephone number;

b. Personal information including date Date of birth, place of birth, age, social security number, sex, gender, primary language, and marital status, and, and proof of U.S. citizenship;

- e. Monthly income;
- d. c. Medical insurance coverage;
- e. d. Educational history, including educational placements background,  
including current or planned enrollment in a special education program  
within a school district;
- f. e. Information documenting showing the existence of a developmental  
disability, including professional assessments and evaluations, as required  
in A.R.S. § 36-559(A)(2) and Article 3 of this Chapter; and
- g. f. A description of any other disabling conditions or special considerations;
- h. If under 18 years of age, total number of persons in the household;
- i. Identification of any adults who regularly live in the home by name, date  
of birth, and relationship to the person to receive services;
- j. Identification of natural parents, regardless of whether living in the home,  
by name, social security number, and business and home telephone  
numbers; and
- k. Identification of two adult persons living outside the home who are  
familiar with the person to receive services, by name, address, relationship  
to the person to receive services, and business and home telephone  
numbers; and

2. With respect to the responsible person, if other than the person to whom services  
would be provided:

- a. Name, business and home addresses address, business and home telephone  
numbers and social security number; and

- b. Relationship to person to whom services would be provided, and
- ~~e. D.~~ If guardianship or conservatorship has been established, the applicant shall provide a copy of the court order with shall accompany the application,
- ~~C.~~ The applicant shall provide a description of programs and services requested.
- ~~D.~~ The applicant shall provide information regarding prior applications for admissions to Division services or services received.
- ~~E.~~ The applicant shall provide documentation of application information as defined in R6-6-405.
- ~~F. E.~~ The Division shall not consider an incomplete application.
1. If the Division receives an application that is not complete, Within 10 calendar days of receipt of an incomplete application, the Division shall send written notification of deficiencies to the applicant notify the applicant of the information needed to complete the application and request the missing information.
2. If the applicant does not provide the specified information within 15 working days of receipt of notification of deficiencies, or cannot demonstrate a good faith effort to collect the information, the Division shall close the applicant's file and send a letter denying admission.
- ~~F.~~ If the applicant does not provide the requested information to the Division by the date specified in the notification under subsection (E), the Division may deny the application and close the file.
- G. An applicant whose file has been closed, and who subsequently desires admission, shall submit a new application.

~~R6-6-403.~~ **Referrals from Juvenile Court**

~~The Division shall determine eligibility of any child assigned to the Division by a juvenile court pursuant to A.R.S. § 8-242. If determined ineligible, the Division shall immediately refer the matter to the Department's Administration for Children, Youth, and Families.~~

~~R6-6-405.~~ **R6-6-403. Documentation and Verification**

The applicant shall provide documentation of the following:

1. Lawful presence of the person to whom services are to be provided, as required by A.R.S. § 1-502.

1. 2. Residency.

a. ~~All applicants shall sign an affidavit stating current residency and intent to remain in Arizona.~~

An applicant shall:

a. Verify current residency and intent to remain in Arizona by signing the application.

b. At the request of the Department, provide additional documentation demonstrating Arizona residency of the person to whom services would be provided.

b. ~~An applicant shall show written proof of Arizona residency by providing one of the following types of documents:~~

i. ~~Rent or mortgage receipt, or lease in the applicant's name showing the residential address;~~

ii. ~~Non-relative landlord statement indicating the applicant's name and address as well as the landlord's name and address and telephone, if available;~~

- iii. ~~Applicant's Arizona driver's license;~~
  - iv. ~~Applicant's Arizona motor vehicle registration;~~
  - v. ~~Signed employment statement from applicant's non-relative employer;~~
  - vi. ~~Utility bill in the applicant's name indicating the applicant's address;~~
  - vii. ~~Current phone directory showing applicant's name and address;~~
  - viii. ~~United States Post Office records which show the applicant's name and address;~~
  - ix. ~~A current city directory showing the applicant's name and address;~~
  - x. ~~Certified copy of a church membership or enrollment record which indicates the applicant's current name and address; or~~
  - xi. ~~Certified copy of a school record which indicates the applicant's current address; or~~
- e. ~~If an applicant has made all reasonable efforts to obtain documented verification as described in subsection (1)(b) and has been unsuccessful, the affidavit signed by the applicant attesting to the applicant's present residence and intent to remain in Arizona shall be sufficient.~~

2. ~~Age:~~

- a. ~~An applicant shall provide proof of age of the person to receive services by the following:~~
  - i. ~~Alien documents;~~
  - ii. ~~Federal or state census records;~~

- iii. ~~Hospital records of birth;~~
- iv. ~~Copy of birth certificate;~~
- v. ~~Military records;~~
- vi. ~~Notification of birth registration;~~
- vii. ~~Religious records showing age or date of birth;~~
- viii. ~~Dated school records showing age or school records showing date of birth;~~
- ix. ~~Affidavit signed by the licensed physician, licensed midwife or other health care professional who was in attendance at the time of the birth, attesting to the date of birth; or~~
- x. ~~U.S. Passport.~~

b. ~~If an applicant has made all reasonable efforts to obtain documented verification as described in subsection (2)(a) and has been unsuccessful, an affidavit signed by the applicant shall be sufficient to verify age of person to receive services.~~

3. ~~Health Insurance Coverage. An applicant shall provide information regarding current health insurance coverage which relates to for the individual for whom application is being made as provided in R6-6-1301 et seq person to whom services would be provided, as required in Article 13 of this Chapter.~~

4. ~~Income. The Division shall require documentation of income as provided in R6-6-1201 et seq.~~

**R6-6-404. Eligibility under ALTCS**

- A. The Division shall refer individuals with developmental disabilities who may be eligible for the Arizona Long-term Care System (ALTCS) to the Arizona Health Care Cost Containment System Administration (AHCCCS) to determine eligibility under ALTCS.
- ~~B. The Division shall not provide services, other than emergency services as provided under R6-6-502, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed.~~
- ~~C. Applicants who voluntarily refuse to cooperate in the ALTCS eligibility process are not eligible for Division services pursuant to A.R.S. § 36-559.~~

**ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT**

**TITLE 6. ECONOMIC SECURITY**

**CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY - DEVELOPMENTAL**

**DISABILITIES**

**ARTICLE 4. APPLICATION**

**1. Identification of the rulemaking:**

Article 4 contains rules on Application including Application for Admission to Services, Consent, Referrals from Juvenile Court, Eligibility under ALTCS, and Documentation and Verification. The purpose of the rulemaking is to add, amend, and repeal rules to conform to current practice and terminology, and to make the rules more clear, concise, and understandable. The Department last amended this Article in 1993. A Five-Year Review Report for Chapter 6 was approved by the Governor's Regulatory Review Council (GRRC) on December 1, 2015.

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

Name: Christian J. Eide

Address: Department of Economic Security

P.O. Box 6123, Mail Drop 1292

Phoenix, AZ 85005

or

Department of Economic Security

1789 W. Jefferson, Mail Drop 1292

Phoenix, AZ 85007

Telephone: (602) 542-9199

Fax: (602) 542-6000

E-mail: ceide@agdes.gov

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

The Division anticipates that this rulemaking will have a minimal economic impact on the implementing agency, small businesses, and consumers. There is no anticipation of increased costs since the primary changes made to the rule revolve around the process of applying as well as removing outdated language from the rule. There is no significant programmatic or membership change anticipated as a result of these changes.

**4. Cost-benefit analysis:**

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

There is no significant fiscal impact to state agencies directly affected by the rulemaking. There is no anticipation of increased costs since the primary changes made to the rule revolve around the process of applying as well as removing outdated language from the rule. There is no significant programmatic or membership change anticipated as a result of these changes.

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

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

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

Not applicable

**5. Impact on private and public employment:**

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

**6. Impact on small businesses:**

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

This rulemaking does not impact small businesses.

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

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

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

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

Not applicable

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

Not applicable

**iii. Consolidate or simplify compliance or reporting requirements:**

Not applicable

**iv. Establish separate performance standards:**

Not applicable

**v. Exempt small businesses from any or all requirements:**

Not applicable

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

The rulemaking does not impose any obligation on the individual or responsible person to accept or participate in services without informed consent. Consumers who apply to the Division and members of the public will benefit from this rulemaking because it will add, amend, and repeal rules to conform to current practices and terminology, and will make the rules more clear, concise, and understandable for improved quality of care.

**8. Probable effects on state revenues:**

None

**9. Less intrusive or less costly alternative methods considered:**

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

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

Not applicable

**b. Rationale for not using non-selected alternatives:**

Not applicable

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

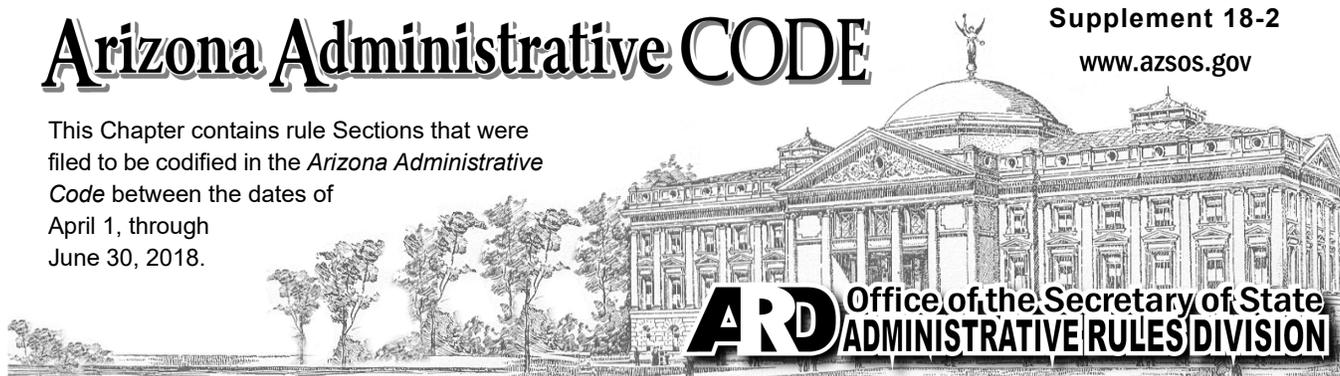
Not applicable

# Arizona Administrative CODE

Supplement 18-2

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, through June 30, 2018.



## TITLE 6. ECONOMIC SECURITY

### CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY - DEVELOPMENTAL DISABILITIES

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

<a href="#">R6-6-301.</a>	<a href="#">Definitions .....</a>	<a href="#">13</a>	<a href="#">R6-6-307.</a>	<a href="#">Eligibility Redeterminations for the Program ....</a>	<a href="#">16</a>
<a href="#">R6-6-302.</a>	<a href="#">Eligibility for Program .....</a>	<a href="#">13</a>	<a href="#">R6-6-308.</a>	<a href="#">Member Responsibilities .....</a>	<a href="#">16</a>
<a href="#">R6-6-303.</a>	<a href="#">Requirements for Determining Eligibility for the Division of Developmental Disabilities .....</a>	<a href="#">14</a>	<a href="#">R6-6-309.</a>	<a href="#">Termination of Eligibility for the Program .....</a>	<a href="#">16</a>
<a href="#">R6-6-304.</a>	<a href="#">Eligibility under Arizona Long-term Care System .....</a>	<a href="#">16</a>	<a href="#">R6-6-501.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
<a href="#">R6-6-305.</a>	<a href="#">Admission to Program .....</a>	<a href="#">16</a>	<a href="#">R6-6-502.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
<a href="#">R6-6-306.</a>	<a href="#">Emergency Services .....</a>	<a href="#">16</a>	<a href="#">R6-6-503.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
			<a href="#">R6-6-504.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>
			<a href="#">R6-6-505.</a>	<a href="#">Repealed .....</a>	<a href="#">18</a>

#### Questions about these rules? Contact:

Name: Christian J. Eide  
Address: Department of Economic Security  
P.O. Box 6123, Mail Drop 1292  
Phoenix, AZ 85005  
or  
Department of Economic Security  
1789 W. Jefferson, Mail Drop 1292  
Phoenix, AZ 85007  
Telephone: (602) 542-9199  
Fax: (602) 542-6000  
E-mail: [ceide@azdes.gov](mailto:ceide@azdes.gov)

**The release of this Chapter in supplement 18-2 replaces supplement 17-4, 76 pages**

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘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.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. 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 2018 is cited as Supp. 18-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### 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.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under 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 *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections 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

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

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



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 6. ECONOMIC SECURITY

CHAPTER 6. DEPARTMENT OF ECONOMIC SECURITY - DEVELOPMENTAL DISABILITIES

(Authority: A.R.S. § 41-1954 et seq.)

Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 02-4).

Editor's Note: Sections R6-6-1004.01 through R6-6-1004.05, R6-6-1104.01 through R6-6-1104.05, and R6-6-1504.01 through R6-6-1504.05 were published with incorrect effective dates in Supp. 97-4. They have been corrected to reflect the effective date as established by the Department (Supp. 98-1).

Sections of this Chapter were amended, adopted, repealed, and renumbered under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 355, § 9 and Laws 1994, Ch. 214, § 7. Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Secretary of State's Office for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; the Department was not required to hold public hearings; and the Attorney General has not certified these rules. Because these rules are exempt from the regular rulemaking process, the Chapter is printed on blue paper.

ARTICLE 1. GENERAL PROVISIONS

Article 1, consisting of Sections R6-6-101 through R6-6-107, adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 1, consisting of Sections R6-6-101 through R6-6-121, renumbered to Article 2, Sections R6-6-201 through R6-6-221, effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 1 consisting of Sections R6-6-101 through R6-6-121 adopted as permanent rules effective September 18, 1987.

New Article 1 consisting of Sections R6-6-101 through R6-6-121 adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Former Article 1 consisting of Sections R6-6-101 through R6-6-115 repealed effective May 2, 1983.

Table listing sections R6-6-101 through R6-6-121 with their respective definitions and page numbers.

Article 2, consisting of Sections R6-6-201 through R6-6-221, renumbered from Article 1, Sections R6-6-101 through R6-6-121, effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 2, consisting of Sections R6-6-201 through R6-6-204, repealed effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 2, consisting of Sections R6-6-201 through R6-6-204, adopted effective May 2, 1983.

Table listing sections R6-6-201 through R6-6-221 with their status (Repealed or Renumbered) and page numbers.

ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES SERVICES

New Article 3 consisting of Sections R6-6-301 and R6-6-302 adopted effective March 30, 1983.

Former Article 3 consisting of Sections R6-6-301 through R6-6-303 repealed effective March 30, 1983.

Table listing sections R6-6-301 through R6-6-304 with their respective definitions and page numbers.

ARTICLE 2. REPEALED

Article 2, consisting of Sections R6-6-201 through R6-6-221, repealed effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

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Article 4, consisting of Sections R6-6-401 through R6-6-414 repealed effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

New Article 4, consisting of Sections R6-6-401 through R6-6-414, adopted effective February 2, 1989.

Former Article 4, consisting of Sections R6-6-401 through R6-6-408, repealed effective March 7, 1983.

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Article 5, consisting of Sections R6-6-501 through R6-6-505, adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Former Article 5 consisting of Sections R6-6-501 through R6-6-503 repealed effective February 2, 1989.

Article 5 consisting of Sections R6-6-501 through R6-6-503 adopted effective December 14, 1984.

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Article 7, consisting of Sections R6-6-701 through R6-6-719 adopted effective August 30, 1994, pursuant to an exemption from the procedures of the Arizona Administrative Procedure Act (Supp. 94-3).

Former Article 7 consisting of Sections R6-6-701 and R6-6-702 repealed effective February 2, 1989.

Article 7 consisting of Sections R6-6-701 and R6-6-702 adopted effective August 8, 1978.

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*Former Article 11 consisting of Sections R6-6-1101 through R6-6-1103 repealed effective September 18, 1987.*

*Article 11 consisting of Sections R6-6-1101 through R6-6-1104 repealed as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.*

*Section R6-6-1104 repealed effective February 3, 1983.*

*Article 11 consisting of Sections R6-6-1101 through R6-6-1104 adopted effective March 17, 1981.*

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Article 15, consisting of Sections R6-6-1501 and R6-6-1502, repealed effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2).

Article 15, consisting of Sections R6-6-1501 and R6-6-1502, adopted effective May 12, 1982.

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**ARTICLE 17. EXPIRED**

Article 17, consisting of Sections R6-6-1701 through R6-6-1706 expired under A.R.S. § 41-1056(E) at 11 A.A.R. 4308, effective August 30, 2005 (Supp. 05-4).

Article 17 consisting of Sections R6-6-1701 through R6-6-1706 adopted effective April 30, 1981.

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**ARTICLE 18. ADMINISTRATIVE REVIEW**

Article 18 consisting of Sections R6-6-1801 through R6-6-1804 adopted effective March 8, 1983.

Article 18, consisting of Sections R6-6-1801 through R6-6-1804 repealed effective August 29, 1991 (Supp. 91-3).

Article 18, consisting of Sections R6-6-1801 through R6-6-1806 adopted effective August 29, 1991 (Supp. 91-3)

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Article 19, consisting of Sections R6-6-1901 through R6-6-1912, adopted effective April 17, 1996 (Supp. 96-2).

Article 19, consisting of Sections R6-6-1901 through R6-6-1911, adopted again as emergency rules effective March 12, 1996 (Supp. 96-1).

Article 19, consisting of Sections R6-6-1901 through R6-6-1911, adopted as emergency rules effective September 13, 1995 (Supp. 95-3).

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Article 19, consisting of Sections R6-6-1901 and R6-6-1902 repealed effective August 29, 1991 (Supp. 91-3).

Article 19 consisting of Sections R6-6-1901 and R6-6-1902 adopted effective October 16, 1981.

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**ARTICLE 20. CONTRACTS**

Former Article 20, consisting of Sections R6-6-2001 through R6-6-2016, recodified to Article 22; new Article 20, consisting of Sections R6-6-2001 through R6-6-2011, recodified from Article 19 at 9 A.A.R. 36, effective December 13, 2002 (Supp. 02-4).

Article 20 consisting of Sections R6-6-2001 through R6-6-2010 adopted effective March 7, 1983.

Article 20, consisting of Sections R6-6-2001 through R6-6-2010, repealed effective August 29, 1991 (Supp. 91-3).

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**ARTICLE 1. GENERAL PROVISIONS****R6-6-101. Definitions**

In addition to the definitions found in A.R.S. §§ 36-551 and 36-596.51, the following definitions apply to this Chapter, unless otherwise provided in a specific Article of this Chapter:

1. "Administrative Review" means a mechanism of informal review for decisions made by the Division of Developmental Disabilities.
2. "Adult" means a person aged 18 years or above.
3. "Agency" means any organization, funded by the Division, which provides services to individuals with developmental disabilities.
4. "Agency administrator" means the Chief Executive Officer or designee of an agency.
5. "AHCCCS" means the Arizona Health Care Cost Containment System.
6. "ALTCS" means the Arizona Long-term Care System.
7. "ALTCS service provider" means those service providers through whom health care services are delivered to DD/ALTCS clients.
8. "Appeals Board" means the Department of Economic Security Appeals Board.
9. "Appellant" means any person or the Department who appeals an action under R6-6-1801 *et seq.*
10. "Appellate Services Administration/Long-term Care" means the Appellate Services Administration/Long-term Care within the Department of Economic Security.
11. "Applicant" means the responsible person as defined in A.R.S. § 36-551 who has applied for Division services.
12. "Assignment of benefits" means the insurer is entitled to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment.
13. "Behavior management" means procedures designed to increase a client's appropriate behaviors and decrease inappropriate behaviors which are a problem to the client or others.
14. "Behavior-modifying medications" means drugs which are prescribed, administered, and directed for the purpose of reducing or eliminating certain behaviors.
15. "Benefits" means, for the purpose of determining cost of care portion under Article 12, monies received from SSI, SSA, or other governmental funds which may be subject to a cost of care portion for residential and other services provided by the Division.
16. "Case plan" means a written document used by child welfare staff which is a separate and distinct part of the case record. It identifies the case plan goal and target date, objectives, tasks, time-frames, responsible parties, consequences, and barriers. The child welfare care manager is responsible for the development and implementation of the case plan in consultation with the family and service team.
17. "Child" means a person under the age of 18 years.
18. "Community residential setting resident" or "resident" means any person placed for care in a community residential setting whether or not the person is a client of the Department.
19. "Cost of care" means the dollar value of services listed in R6-6-1201(B) provided to a client through the Division.
20. "Cost of care portion" means the percentage of a client's cost of care that a parent, client, or responsible person may be required to pay to the Division to help offset the cost of the client's care.
21. "DD/ALTCS client" means an individual with developmental disabilities who has met the eligibility criteria of both the Division of Development Disabilities and the Arizona Long-term Care System (ALTCS).
22. "DD/non-ALTCS client" means an individual who has met the eligibility criteria of the Division but who does not meet the eligibility criteria of ALTCS.
23. "Direct care staff" means a person who is employed or contracted to provide direct services to clients by either a community residential setting licensee or license applicant, or by an agency applying for or certified to provide Home and Community-based Services.
24. "District Program Manager" or "DPM" means the Division of Developmental Disabilities' administrator or designee in each of the Department's six planning districts.
25. "Emergency measures" means physical management techniques used in an emergency to manage a sudden, intense, or out-of-control behavior.
26. "Evacuation device" means equipment used to facilitate the evacuation of a community residential setting in the event of an emergency.
27. "Exclusion time-out" means a time-out procedure in which an individual is removed from a reinforcing environment to an environment which is less reinforcing or in which there is less opportunity to earn reinforcement.
28. "Family support services" means those services and supports provided by the division and are designed to strengthen the family's role as a primary care giver, prevent inappropriate out-of-home placement, maintain family unity, and reunite families with members who have been placed out of the home."
29. "Family support voucher" means a written authorization provided to a client or responsible person to purchase family support services.
30. "Fee for service" means the costs that are assessed pursuant to R6-6-1201 *et seq.* for services received from or through the Division.
31. "Fire Risk Profile" means an instrument prescribed by the Division that yields a score for a facility based on the ability of the resident to evacuate the community residential setting.
32. "Forced Compliance" means a procedure in which an individual is physically forced to follow a direction or command.
33. "Grievant" means any person who is aggrieved by a decision of the Department.
34. "Health insurance payments" means the assignment of rights to medical support or other third-party payments for medical care.
35. "Health Plan" means a service provider of health-related services.
36. "Hearing Officer" means any person selected to hear and render a decision in an appeal under Article 22 of this Chapter.
37. "Human Rights Committee" or "HRC" means a committee established by the Director to provide independent oversight and review as described in R6-6-1701 *et seq.*
38. "IEP" or "Individualized Education Plan" means a written statement for providing special education services to a child with a disability that includes the pupil's present levels of educational performance, the annual goals, and the short-term measurable objectives for evaluating progress toward those goals and the specific special education and related services to be provided.
39. "Income" means, as used in Article 12, net taxable income as reported on the person's last tax return.
40. "Individual service and program plan" or "ISPP" means a written statement of services to be provided to an individ-

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- ual with developmental disabilities including habilitation goals and objectives and determinations as to which services, if any, the client may be assigned. The ISPP incorporates and replaces the Individual Program Plan and the placement evaluation, both as defined in A.R.S. § 36-551, and the service plan as defined in A.R.S. § 36-2938.
41. "Individual service and program plan team" or "ISPP team" means a group of persons assembled by the Division and coordinated by the client's case manager in compliance with A.R.S. §§ 36-551 and 36-560 to develop an ISPP for each client.
  42. "Insured" means the party to an insurance arrangement to whom, or on behalf of whom, the insurance company agrees to indemnify for losses, provide benefits, or render services.
  43. "Insurer" means the insurance company assuming risk and agreeing to pay claims or provide services.
  44. "Least intrusive" or "least obtrusive" means the level of intervention necessary, reasonable, and humanely appropriate to the client's needs, which is provided in the least disruptive or invasive manner possible.
  45. "License applicant" means a person or business entity which submits an application to the Division for an initial or a renewal license to operate a community residential setting.
  46. "Licensee" means a person or entity licensed as a community residential setting, or a person designated by such person or entity to be responsible for carrying out the requirements under these rules.
  47. "Lives independently" means a client who lives in a primary residence in which the Division does not fund, in whole or in part, daily habilitation or room and board and for which the client secures the residence and is the principle signatory on the lease or rental agreement; makes decisions regarding roommates, furnishings, and arrangements for on-site services; makes the payments relating to the residence; and makes decisions to terminate such arrangements or lease or rental agreement.
  48. "Main provider record" means a record maintained by a service provider which contains all pertinent information concerning the evaluations of, and the services provided to, a client, and which is located in a designated place.
  49. "Mechanical restraint" means any mechanical device used to restrict the movement or normal function of a portion of the client's body, excluding only those devices necessary to provide support for the achievement of functional body position or proper balance.
  50. "Medically necessary services" means those covered services provided by a physician or other licensed practitioner of the healing arts within the scope of their practice under state law to prevent disease, disability, and other adverse health conditions or their progression or to prolong life.
  51. "Medication error" means that one or more of the following has occurred: a client is given the wrong medication or the wrong dosage, the medication is given at the wrong time or not given at all, or the medication is given via the wrong route or to the wrong person.
  52. "Monitoring" means the process of reviewing licensed adult and child developmental homes and community residential settings for compliance with licensing, contractual, or programmatic requirements.
  53. "Office of Appeals" means the Office of Appeals of the Department of Economic Security.
  54. "Overcorrection" means a group of procedures designed to reduce inappropriate behavior, in specifically:
    - a. Requiring a client to restore the environment to a state vastly improved from that which existed prior to the inappropriate behavior; or
    - b. Requiring a client to repeatedly practice a behavior.
  55. "Party" means any person appealing an action under R6-6-1801 et seq. or the Department.
  56. "Physical restraint" means a procedure whereby one or more persons restrict a client's freedom of movement for the purpose of managing the client's behavior.
  57. "Policy" in Article 13 means the written contract effecting insurance or the certificate thereof by whatever name called, and papers attached thereto and made a part thereof.
  58. "Program contractor" means the Division of Developmental Disabilities in its position as program contractor to AHCCCS.
  59. "Program Review Committee" or "PRC" means a group of persons designated by the District Program manager to review and approve or disapprove all behavior management programs before such programs may be implemented or sent to the Human Rights Committee.
  60. "Program Unit" means a location where services are provided.
  61. "Protective device" means an appliance used to prevent a client from engaging in self-injurious behavior, used by a medical practitioner to restrain an individual while a treatment or procedure is being performed, or authorized by a medical practitioner for use in response to a medical condition.
  62. "Residential service" means a residential living arrangement operated by the Division or by providers funded by the Division, in which clients live with varied degrees of appropriate supervision.
  63. "Reinforcer" means any consequence that maintains or increases the future probability of the response it follows.
  64. "Response cost" means a procedure designed to decrease inappropriate behaviors by removing earned reinforcers or possessions as a consequence of an inappropriate behavior.
  65. "Responsible party" means a client or a person or entity that is obligated or liable to pay the cost of care for a client, including the parent of a minor client, representative payee, guardian, or conservator, and the personal representative of an estate, or the trustee of a trust of which the client is a beneficiary.
  66. "Seclusion" or "locked time-out room" means the placement of a client in a room or other area from which the client cannot leave.
  67. "Service provider" means an agency or individual operating under a contract or service agreement with the Department to provide services to Division clients.
  68. "Services" means developmental disability programs and activities consistent with family support philosophy and operated by or contracted for the Department directly or indirectly, including residential services, family and child services, family and adult services, and case management and resource services.
  69. "Standards" means Arizona Revised Statutes, administrative rules, the Code of Federal Regulations, interagency and intergovernmental agreements, and contract provisions that apply to licensing and monitoring community residential settings.
  70. "Tardive Dyskinesia" means a slow, rhythmic, automatic stereotyped movement which occasionally occurs, either generalized or in single muscle groups, as an undesired side effect of therapy with certain psychotropic drugs.

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71. "Third-party liability" means the resources available from a person or entity that is or may be, by agreement, circumstances, or otherwise, liable to pay all or part of the medical expenses incurred by a Division client.
72. "Third-party payor" means any individual, entity, or program that is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a Division client.
73. "Time-out device" means a secured room or area used to enforce a "time-out procedure."
74. "Time-out procedure" means a procedure in which the client's access to sources of various forms of reinforcement is removed for the purpose of decreasing a client's inappropriate behavior.
75. "Vulnerable adult" means an individual who is 18 years of age or older and who is unable to protect himself from abuse, neglect, or exploitation by others because of a mental or physical impairment according to A.R.S. § 13-3623.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended paragraph (19) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-101 renumbered to R6-6-201, new Section R6-6-101 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3). Amended effective February 1, 1996; filed in the Office of the Secretary of State December 26, 1995 (Supp. 95-4). Amended under an exemption from A.R.S. Title 41, Chapter 6, effective December 1, 1996; filed in the Office of the Secretary of State November 22, 1996 (Supp. 96-4). Amended by exempt rulemaking at 10 A.A.R. 205, effective January 1, 2004 (Supp. 03-4). R6-6-101(36) reference to Article 20 corrected to Article 22 at request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-102. Rights of Individuals with Developmental Disabilities**

The Division and its service providers shall guarantee the rights of individuals with developmental disabilities in the provision of services in compliance with applicable federal and state laws.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-102 renumbered to R6-6-202, new Section R6-6-102 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-102 renumbered to R6-6-103, new Section R6-6-102 adopted effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). R6-6-102 Section heading corrected at the request of the Department, Office File No. M10-461, filed December 6, 2010 (Supp. 10-1).

**R6-6-103. Confidentiality Officer**

- A. Each district shall designate one Division staff person to act as a confidentiality officer.
- B. Confidentiality officers shall completely administer and supervise the maintenance and use of all personally identifiable information in the Division including storage, disclosure, retention, and destruction of this information in accordance with procedures of the Division and applicable state law.
- C. At the time of eligibility determination reviews, confidentiality officers or their designees shall notify responsible persons of their rights pursuant to A.R.S. § 36-568.01 regarding disclosure of personally identifiable information.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-103 renumbered to R6-6-203, new Section R6-6-103 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-103 renumbered to R6-6-104, new Section R6-6-103 renumbered from R6-6-102 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-104. Access to Personally Identifiable Information**

- A. The Division and its service providers shall each maintain a list of persons or titles who are authorized to have access to personally identifiable information in their files.
- B. The service provider shall maintain a main provider record for each client; the file shall be available to responsible persons upon request.
- C. Where a service provider uses a centralized recordkeeping system, the service provider shall also make available appropriate records in the program unit.
- D. Where particular professional services require the maintenance of separate records, a summary of the information contained therein shall be entered in the main provider record maintained by the client's service provider.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Corrected subsection (B) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-104 renumbered to R6-6-204, new Section R6-6-104 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-104 renumbered to R6-6-105, new Section R6-6-104 renumbered from R6-6-103 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-105. Consent for Release of Information**

- A. Consent for the release of personally identifiable information shall be:
  1. Obtained from the client or responsible person in writing and dated;
  2. Maintained in the main record.
- B. Consents for release of information obtained during intake shall expire within 90 days.
- C. Subsequent consents shall be obtained as needed and shall be valid for six months from the date of execution.

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**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-105 renumbered to R6-6-205, new Section R6-6-105 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-105 renumbered to R6-6-106, new Section R6-6-105 renumbered from R6-6-104 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-106. Violations and Penalties**

- A. An employee of the Division or service provider shall not disclose personally identifiable client information unless a consent to release has been given as provided in this Section.
- B. An employee of the Division who makes an unlawful disclosure of personally identifiable information is subject to disciplinary action or dismissal. Anyone who has knowledge of an employee's violation of R6-6-106 must report the violation to the employee's supervisor.
- C. Violators are subject to penalties pursuant to applicable statute.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-106 renumbered to R6-6-206, new Section R6-6-106 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-106 renumbered to R6-6-107, new Section R6-6-106 renumbered from R6-6-105 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-107. Least Restrictive Environment**

- A. Every client has a right to the least restrictive, appropriate alternative in connection with the provision of services or placement in a program.
- B. Every client has the right to a semi-annual review of services or programs funded by the Division and received by the client in order to ensure that the client's needs are met.

**Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-107 renumbered to R6-6-207, new Section R6-6-107 adopted effective June 7, 1993, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-107 renumbered to R6-6-108, new Section R6-6-107 renumbered from R6-6-106 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-108. Safe and Humane Environment**

- A. This Section does not apply to community residential settings that are governed by the provisions of Article 7, 8, 10, or 11 of this Chapter.
- B. Service providers shall have a written and posted plan for meeting potential emergencies and disasters.

- C. The plan shall be reviewed annually by the Division and shall include, but shall not be limited to:
  1. The assignment of staff to specified duties and responsibilities;
  2. A system for notification of appropriate persons;
  3. Specification of evacuation routes and procedures including provisions for clients who are incapable of taking action for self-preservation; and
  4. Provision for at least one rehearsal per year to evaluate the effectiveness of the plan.
- D. Programs operated by the Division, or by a profit or nonprofit agency supervised or financially supported by the Division, shall have an active safety program, which shall include, but shall not be limited to:
  1. Staff training for meeting potential emergencies and disasters such as fire, severe weather, and missing persons;
  2. Staff training in the use of alarm systems and signals, firefighting, and equipment and evacuation devices;
  3. Staff training in administering first aid, including cardiopulmonary resuscitation (CPR) and the Heimlich maneuver, in the presence of accident or illness;
  4. Provisions for the avoidance of hazards such as accessibility to dangerous substances, sharp objects, and unprotected electrical outlets;
  5. Provisions for the use of glass or other glazing material appropriate to the safety of the individuals served;
  6. The use of clean, nonabrasive, slip-resistant, and safe surfaces on floors and stairs;
  7. Provisions for the avoidance of heating apparatus and hot water temperatures that constitute a burn hazard to the individuals served; and
  8. The use of lead-free paint in areas to which clients have access.
- E. Programs operated by the Division, or by a profit or nonprofit agency supervised or financially supported by the Division, shall conform to local fire safety standards and the fire safety standards as approved and promulgated by the Arizona State Fire Marshal's office or by tribal fire department standards, whichever is appropriate.
- F. Programs operated by the Division, or by a profit or nonprofit agency supervised or financially supported by the Division, shall provide adequate heating and cooling.
- G. Service providers shall keep copies of all licenses, certificates, and correspondence in a separate file to document compliance with sanitation, health, and environmental codes of state and local authorities having primary jurisdiction in these matters. The file shall be available for inspection by the Division employees during regular business hours.
- H. Service provider staff shall:
  1. Always give clients the least amount of physical assistance necessary to accomplish a task;
  2. Ensure that clients be accorded privacy during treatment and care of personal needs;
  3. Care for the client's personal needs and, except in cases of emergency, ensure that each client is afforded the right to have care for personal needs provided by a staff member of the gender chosen by the client/responsible person. This choice needs to be specified in the ISPP;
  4. Ensure that clients are afforded privacy with regard to written correspondence, telephone communication, and visitations; and
  5. Uphold respect for the dignity of individuals with developmental disabilities during tours of client residences, work areas, or classrooms.

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**Historical Note**

Section R6-6-108 adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-108 renumbered to R6-6-208 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-108 renumbered from Section R6-6-107 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Amended effective August 30, 1994, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-109. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Deleted subsection (O); corrected subsections (E), (H), and (I); amended subsections (J) and (M); and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-208 renumbered from R6-6-108 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-110. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-210 renumbered from R6-6-110 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-111. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsection (B) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-210 renumbered from R6-6-110 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-112. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-212 renumbered from R6-6-112 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-113. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsection (C) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-213 renumbered

from R6-6-113 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-114. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-214 renumbered from R6-6-114 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-115. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-215 renumbered from R6-6-115 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-116. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-216 renumbered from R6-6-116 effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-117. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Amended subsections (C), (D), and (F) and adopted as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-217 renumbered from R6-6-117 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-118. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-218 renumbered from R6-6-118 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-119. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-219 renumbered from R6-6-119 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

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**R6-6-120. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-220 renumbered from R6-6-120 effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-121. Renumbered****Historical Note**

Adopted as an emergency effective January 12, 1987, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 87-1). Emergency expired. Adopted without change as a permanent rule effective September 18, 1987 (Supp. 87-3). Section R6-6-213 renumbered from R6-6-113 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**ARTICLE 2. REPEALED****R6-6-201. Repealed****Historical Note**

Former R6-6-201 repealed, new Section R6-6-201 renumbered from R6-6-101 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-201 repealed, new Section R6-6-201 renumbered from R6-6-202 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-202. Repealed****Historical Note**

Former R6-6-202 repealed, new Section R6-6-202 renumbered from R6-6-102 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-202 renumbered to R6-6-201, new Section R6-6-202 renumbered from R6-6-203 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-203. Repealed****Historical Note**

Former R6-6-203 repealed, new Section R6-6-203 renumbered from R6-6-103 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-203 renumbered to R6-6-202, new Section R6-6-203 renumbered from R6-6-204 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-204. Repealed****Historical Note**

Former R6-6-204 repealed, new Section R6-6-204 renumbered from R6-6-104 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-204

renumbered to R6-6-203, new Section R6-6-204 renumbered from R6-6-205 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-205. Repealed****Historical Note**

Section R6-6-205 renumbered from R6-6-105 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-205 renumbered to R6-6-204, new Section R6-6-205 renumbered from R6-6-206 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-206. Repealed****Historical Note**

Section R6-6-206 renumbered from R6-6-106 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-206 renumbered to R6-6-205, new Section R6-6-206 renumbered from R6-6-207 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-207. Repealed****Historical Note**

Section R6-6-207 renumbered from R6-6-107 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-207 renumbered to R6-6-206, new Section R6-6-207 renumbered from R6-6-208 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-208. Repealed****Historical Note**

Section R6-6-208 renumbered from R6-6-108 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-208 renumbered to R6-6-207, new Section R6-6-208 renumbered from R6-6-209 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).

**R6-6-209. Repealed****Historical Note**

Section R6-6-208 renumbered from R6-6-108 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-209 renumbered to R6-6-208, new Section R6-6-209 renumbered from R6-6-210 and amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Repealed effective August 30, 1994, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 94-3).



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**R6-6-221. Renumbered****Historical Note**

Section R6-6-213 renumbered from R6-6-113 and amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Former Section R6-6-221 renumbered to R6-6-220 effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**ARTICLE 3. ELIGIBILITY FOR DEVELOPMENTAL DISABILITIES PROGRAM****R6-6-301. Definitions**

In addition to the definitions in Article 1 of this Chapter, the following definitions apply to this Article:

1. "ALTCS" means Arizona Long-Term Care System under the Arizona Health Care Cost Containment System (AHCCCS).
2. "Autism" means the same as in A.R.S. § 36-551.
3. "Cerebral palsy" means the same as in A.R.S. § 36-551.
4. "Cognitive disability" means a condition that involves subaverage general intellectual functioning, that exists concurrently with deficits in adaptive behavior manifested before the age of eighteen and that is sometimes referred to as intellectual disability.
5. "Department" means the Arizona Department of Economic Security.
6. "Division" means the Division of Developmental Disabilities within the Department.
7. "Epilepsy" means the same as in A.R.S. § 36-551.
8. "Guardian" means the same as in A.R.S. § 36-551.
9. "Individualized education program (IEP)" means a written statement, as defined in 20 U.S.C. 1401 and 1412, for providing special education and related services to a child with a disability.
10. "Lawful Presence" means that an individual is a citizen or permanent legal resident of the United States or that the individual's presence in the United States is otherwise authorized under federal law.
11. "Member" means an individual enrolled with the Division.
12. "Personal information" means facts regarding an individual that may include:
  - a. Address,
  - b. Phone number,
  - c. Changes in physical or behavioral health status, or
  - d. Other health care insurance coverage.
13. "Planning Document" means the same as "Individual program plan" defined in A.R.S. § 36-551, and incorporates:
  - a. The Individual Support Plan (ISP), which serves the same purpose as the individual program plan, the placement evaluation, and the individualized service program plan used in A.R.S. § 36-557;
  - b. The Individual Family Service Plan (IFSP); or
  - c. The Person Centered Plan.
14. "Planning Team" means a placement evaluation team referenced in A.R.S. § 36-560(G)(1), and includes:
  - a. The member;
  - b. The responsible person, if applicable;

- c. The Support Coordinator;
- d. Other Department staff, as necessary; and
- e. Any service provider selected by the member, responsible person, or the Department.

15. "Program" means the developmental disabilities program as outlined in A.R.S. § 36-558.
16. "Resident" means an individual who physically resides within the State of Arizona with the intent to remain, except in the case of minors whose residency is deemed to be the same as that of the guardian.
17. "Responsible person" means the same as in A.R.S. § 36-551.
18. "Services" means child, adult, residential, and resource services provided by the Department, as listed in A.R.S. § 36-558(C).
19. "Support Coordinator" means a "case manager" as defined in A.R.S. § 36-551.

**Historical Note**

Adopted effective October 31, 1978 (Supp. 78-5). Former Section R6-6-301 repealed, new Section R6-6-301 adopted effective March 30, 1983 (Supp. 83-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-301 renumbered to R6-6-302; new Section R6-6-301 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-302. Eligibility for Program**

- A. In order to be eligible for the program, an individual shall:
  1. Demonstrate lawful presence in the United States;
  2. Be a resident of the state of Arizona;
  3. Have a developmental disability as defined in A.R.S. § 36-551 and this Article; and
  4. Complete the application process.
- B. Notwithstanding the provisions of subsection (A), the requirement of state residency does not apply to federal programs that are not subject to residency rules.
- C. As a condition of eligibility, applicants shall assign rights to insurance benefits under this Chapter.
- D. The Department shall make the final determination of eligibility.
- E. The Division's Assistant Director or designee may review a member's eligibility at any time.
- F. Even though an individual may have at one time met the requirements contained in this Article, effective interventions may later reduce substantial functional limitations to the extent that the individual no longer meets the eligibility requirements. When the Department, after a review pursuant to Article 18 of this Chapter, determines that it is necessary for a member to receive continued services to maintain skills or to prevent regression, the member shall remain eligible for the program.
- G. The Department shall determine eligibility for children under the age of six years as follows:
  1. A child under the age of six years may be eligible for the program if there is a strongly demonstrated potential that the child is or will be diagnosed with a developmental disability as determined by developmentally appropriate evaluations.
  2. To be eligible for the program, a child under the age of six years shall:

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- a. Have a diagnosis of cerebral palsy, epilepsy, autism, or cognitive/intellectual disability; or
  - b. Be at risk for being diagnosed with a developmental disability based on:
    - i. An identified delay in one or more areas of development, or
    - ii. The likelihood that without services the child will be diagnosed with a developmental delay or disability.
  - c. Have demonstrated a significant developmental delay as determined in one or more areas of development as measured on a culturally appropriate and recognized developmental assessment tool. Eligibility is exclusive of cultural or environmental factors.
3. For a child under the age of six years, a licensed physician, licensed psychologist, or an individual formally trained in early childhood development who evaluates the child through the use of culturally appropriate and recognized developmental tools and informed clinical opinion shall determine the developmental delay or disability.
- H.** To be eligible for the program, an individual, age six and older shall:
1. Have a diagnosis of cerebral palsy, epilepsy, autism, or cognitive/intellectual disability; and
  2. Have functional limitations in three or more areas of major life activities as described in R6-6-303(C).
- I.** If the Department determines an individual to be ineligible for the program, the Department shall send the applicant a written notice of ineligibility by registered mail with return receipt requested. The notice shall include information regarding the opportunity for administrative review.
- Historical Note**
- Adopted effective October 31, 1978 (Supp. 78-5). Former Section R6-6-302 repealed, new Section R6-6-302 adopted effective March 30, 1983 (Supp. 83-2). Amended effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-302 renumbered to R6-6-303; new Section R6-6-302 renumbered from R6-6-301 and amended by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).
- R6-6-303. Requirements for Determining Eligibility for the Division of Developmental Disabilities**
- A.** For the purpose of eligibility determination, the Department shall accept the diagnoses of autism, cerebral palsy, epilepsy, and cognitive/intellectual disability as follows:
1. Autism. A psychiatrist, neurologist, licensed psychologist, or developmental pediatrician who has expertise in diagnosing autism shall make an autism diagnosis. A pediatrician who has completed specialized training approved by the Department in the diagnosis of autism may also make an autism diagnosis. The psychiatrist, neurologist, licensed psychologist, developmental pediatrician, or pediatrician with specialized training shall submit a diagnostic report regarding the individual documenting the presence of diagnostic criteria for autism, including the presence of the required number of symptoms of autism based on current guidelines established by the American Psychiatric Association.
  2. Cerebral palsy. A licensed physician with expertise in diagnosing neurological disorders, such as a neurologist, or specialist in rehabilitation medicine, shall diagnose cerebral palsy. The physician shall submit a report to the Department documenting the diagnosis of cerebral palsy and include available medical records supporting the diagnosis.
3. Epilepsy. A physician specializing in neurology shall diagnose epilepsy.
    - a. The physician specializing in neurology shall submit a report to the Department documenting the active diagnosis of epilepsy and include the following:
      - i. Electroencephalogram (EEG) report;
      - ii. A description of the nature and frequency of the seizures, including current anti-seizure medication; and
      - iii. Confirmation of the ongoing nature of the disorder.
    - b. If the records of a neurological evaluation cannot be obtained or a diagnosis is not made by a physician specializing in neurology, the Division Medical Director shall review the available medical records to confirm a diagnosis of epilepsy.
4. Cognitive/Intellectual Disability.
    - a. A licensed psychologist trained to perform psychological evaluations utilizing standardized, culturally appropriate, and psychometrically sound measures shall diagnose cognitive/intellectual disability by considering the following:
      - i. Other mental disorders identified in current guidelines established by the American Psychiatric Association, including Schizophrenia, Bipolar Disorder, Attention Deficit Hyperactivity Disorder, and Substance Abuse;
      - ii. Significant disorders related to language or language differences;
      - iii. Physical factors, including sensory impairments, motor impairments, acute illness, chronic illness, and chronic pain;
      - iv. Testing performed during an acute inpatient hospitalization;
      - v. Educational or environmental deprivation; and
      - vi. Psychosocial factors.
    - b. To be eligible for the program, in the presence of co-existing mental illness, an individual's cognitive/intellectual disability shall not be the result of the onset of mental illness.
    - c. If an existing psychological evaluation cannot be obtained, or an initial psychological evaluation cannot be completed, the Division's Assistant Director or designee shall review the available records to confirm eligibility.
- B.** An individual, who acquires an impairment or condition after age six as a result of illness or traumatic brain injury, is not eligible in the absence of a qualifying diagnosis.
- C.** The Department shall determine substantial functional limitations in three or more areas of the major life activities as documented in records provided to the Department. These limitations are defined as follows:
1. Self-care. Self-care means the performance of personal activities that sustain the health and hygiene of the individual appropriate to the individual's age and culture. This includes bathing, toileting, tooth brushing, dressing, and grooming. A functional limitation regarding self-care occurs when an individual requires significant assistance with eating, hygiene, grooming, or health care skills or when the time required for an individual to complete these tasks is so excessive as to impede the ability to retain employment, attend school, or to conduct other

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- activities of daily living. Documentation of substantial functional limitations for self-care may include recent:
- a. Medical or behavioral records;
  - b. IEP that addresses limitations of self-care goals and objectives;
  - c. Relevant comments in a psychological or psychoeducational evaluation;
  - d. Relevant scores on the ALTCS assessment, Preadmission Screening (PAS) tool;
  - e. Relevant scores on the Vineland Adaptive Behavior Scales; or
  - f. Other structured standardized tests of adaptive functioning.
2. Receptive and expressive language. Receptive and expressive language means the process of understanding and participating in conversations in the individual's primary language, and expressing needs and ideas that can be understood by another individual who may not know the individual. A functional limitation regarding receptive and expressive language occurs when an individual is unable to communicate with others, or is unable to communicate effectively without the aid of a mechanical device, a third person, or a person with special skills. Documentation of substantial functional limitations for receptive and expressive language may include recent:
    - a. Psychological, psychoeducational, or speech evaluation records;
    - b. IEP references of severe communication deficits;
    - c. Use of sign language, a communication board, or an electronic communication device; or
    - d. Relevant scores on the ALTCS assessment, PAS tool.
  3. Learning. Learning means the ability to acquire, retain, and apply information and skills. A functional limitation regarding learning occurs when an individual's cognitive factors, or other factors related to the acquisition and processing of new information are impaired to the extent that the individual is unable to participate in age-appropriate learning activities without utilization of additional resources. Documentation of limitations for learning may include verification of placement in a special education program.
  4. Mobility. Mobility means the skill necessary to move safely and efficiently from one location to another within the individual's residence, neighborhood, and community. A functional limitation regarding mobility occurs when an individual's fine or gross motor skills are impaired to the extent that the assistance of another individual or mechanical device is required to move from place to place or when the effort required to move from place to place is so excessive as to impede ability to retain employment and conduct other activities of daily living. Documentation of limitations for mobility may include:
    - a. Relevant scores on the ALTCS assessment, PAS tool; or
    - b. Medical or educational records indicating the need to regularly use a wheelchair, walker, crutches, or other assistive devices, or to be physically supported by another person when ambulating.
  5. Self-direction.
    - a. Self-direction means the ability to manage one's life, including:
      - i. Setting goals,
      - ii. Making and implementing plans to achieve those goals,
      - iii. Making decisions and understanding the consequences of those decisions,
      - iv. Managing personal finances,
      - v. Recognizing the need for medical assistance,
      - vi. Behaving in a way that does not cause injury to self or others, and
      - vii. Recognizing and avoiding safety hazards.
    - b. A functional limitation regarding self-direction occurs when an individual requires assistance in managing personal finances, protecting self-interest, or making independent decisions that may affect well-being. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics.
    - c. Documentation of limitations for self-direction may include:
      - i. Court records appointing a legal guardian or conservator,
      - ii. Relevant comments in medical or behavioral records,
      - iii. Relevant comments in psychoeducational or psychological evaluation,
      - iv. Relevant objectives in the IEP, or
      - v. Relevant scores on the ALTCS assessment, PAS tool.
  6. Capacity for independent living.
    - a. Capacity for independent living means the performance of necessary daily activities in one's own residence and community, including:
      - i. Completing household chores;
      - ii. Preparing simple meals;
      - iii. Operating household equipment such as washing machines, vacuums, and microwaves;
      - iv. Using public transportation; and
      - v. Shopping for food, clothing, and other essentials.
    - b. A functional limitation regarding the capacity for independent living occurs when an individual needs supervision or assistance for the individual's safety or well-being, on at least daily basis in the performance of health maintenance and housekeeping. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics, including:
      - i. Age of the child,
      - ii. Culture,
      - iii. Language,
      - iv. Length of time to complete task,
      - v. Level and type of supervision or assistance needed,
      - vi. Quality of task performance,
      - vii. Effort expended to complete the task performance,
      - viii. Consistency and frequency of task performance, and
      - ix. Impact of other health conditions.
    - c. Documentation of limitations for the capacity for independent living may include:
      - i. Relevant comments in a psychoeducational or psychological evaluation,

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- ii. Related objectives on the IEP, or
  - iii. Relevant comments in medical records.
7. Economic self-sufficiency. Economic Self-Sufficiency means when an individual is unable to perform the tasks necessary for regular employment or is limited in productive capacity to the extent that earned annual income, after extraordinary expenses occasioned by the disability, is below the poverty level. For children under the age of 18, the Department shall compare the child's abilities in this area with age and developmentally appropriate abilities based on the current guidelines of Centers for Disease Control and Prevention and American Academy of Pediatrics. Documentation of limitations for economic self-sufficiency may include:
- a. The receipt of Supplemental Security Income (SSI) or Social Security Disability Income (SSDI) benefits, or
  - b. Eligibility for Vocational Rehabilitation Services.

**Historical Note**

Adopted effective October 31, 1978 (Supp. 78-5).  
 Repealed effective March 30, 1983 (Supp. 83-2). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-303 repealed; new Section R6-6-303 renumbered from R6-6-302 and amended by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-304. Eligibility under Arizona Long-term Care System**

- A. The Department shall refer an individual with a developmental disability who may be eligible for the ALTCS to the Arizona Health Care Cost Containment System Administration (AHC-CCS) to determine eligibility under ALTCS.
- B. The Department shall not provide services, other than emergency services as provided in this Chapter, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed.
- C. Applicants who are determined eligible and enrolled in the program, but knowingly refuse to cooperate in the ALTCS eligibility process, are not eligible for services pursuant to A.R.S. § 36-559.

**Historical Note**

New Section R6-6-304 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-305. Admission to Program**

When the Department determines an individual to be eligible and enrolls the individual in the program, the Support Coordinator, with the Planning Team, shall complete a Planning Document to document any necessary supports and services.

**Historical Note**

New Section R6-6-305 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-306. Emergency Services**

In an emergency, the Department may provide services without a Planning Document to an individual who has been enrolled in the program. The Planning Team shall complete a Planning Document for emergency services within 10 days of the enrollment.

**Historical Note**

New Section R6-6-306 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-307. Eligibility Redeterminations for the Program**

The Department may redetermine eligibility for the program:

- 1. As a result of periodic evaluations in accordance with A.R.S. § 36-565; or
- 2. At any time, as authorized by the Division's Assistant Director or designee.

**Historical Note**

New Section R6-6-307 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-308. Member Responsibilities**

Members shall:

- 1. Inform the Support Coordinator of any change in personal information;
- 2. Participate in the development of the Planning Document and signify agreement or disagreement by signing the Planning Document;
- 3. Uphold all local, state, and federal laws and regulations; and
- 4. Cooperate and comply with the ALTCS redetermination process.

**Historical Note**

New Section R6-6-308 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-309. Termination of Eligibility for the Program**

- A. Pursuant to A.R.S. § 36-566(A) and (B), the Department may terminate eligibility following a 35-day written notice period to the member or the responsible person when:
  - 1. The Department determines that the member no longer meets the conditions of eligibility for services;
  - 2. The member reaches the age of 18, unless an application for eligibility has been filed with the Department; or
  - 3. The member fails to comply with R6-6-308.
- B. The 35-day written notice shall include the proposed termination date and information regarding the opportunity for administrative review under Article 18 of this Chapter.
- C. The Department shall terminate the member's eligibility for the program if the member or responsible person provides a written request for withdrawal from the program.

**Historical Note**

New Section R6-6-309 made by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**ARTICLE 4. APPLICATION****R6-6-401. Application for Admission to Services**

- A. To apply for Division services, an applicant shall:
  - 1. Participate in a face-to-face interview with a designated Department employee; and
  - 2. File with the Division a written application on a form prescribed by and available from the Division at no charge.
- B. The application form shall contain the following information:
  - 1. With respect to the person to receive services:
    - a. Name, address, and telephone number;
    - b. Personal information including date of birth, place of birth, age, social security number, sex, primary language, marital status, and citizenship;
    - c. Monthly income;
    - d. Medical insurance coverage;
    - e. Educational background, including current or planned enrollment in a special education program within a school district;

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- f. Information documenting the existence of a developmental disability, including professional assessments and evaluations;
  - g. A description of any other disabling conditions or special considerations;
  - h. If under 18 years of age, total number of persons in the household;
  - i. Identification of any adults who regularly live in the home by name, date of birth, and relationship to the person to receive services;
  - j. Identification of natural parents, regardless of whether living in the home, by name, social security number, and business and home telephone numbers; and
  - k. Identification of two adult persons living outside the home who are familiar with the person to receive services, by name, address, relationship to the person to receive services, and business and home telephone numbers; and
2. With respect to the responsible person, if other than the person to whom services would be provided:
- a. Name, business and home addresses, business and home telephone numbers, and social security number;
  - b. Relationship to person to whom services would be provided; and
  - c. If a guardianship or conservatorship has been established, a copy of the court order shall accompany the application;
- C. The applicant shall provide a description of programs and services requested.
- D. The applicant shall provide information regarding prior applications for admission to Division services or services received.
- E. The applicant shall provide documentation of application information as defined in R6-6-405.
- F. The Division shall not consider an incomplete application.
- 1. If the Division receives an application that is not complete, the Division shall send written notification of deficiencies to the applicant.
  - 2. If the applicant does not provide the specified information within 15 working days of receipt of notification of deficiencies, or cannot demonstrate a good faith effort to collect the information, the Division shall close the applicant's file and send a letter denying admission.
- G. An applicant whose file has been closed and who subsequently desires admission shall submit a new application.

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-402. Expired****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 465, effective January 11, 2017 (Supp. 17-1).

**R6-6-403. Referrals from Juvenile Court**

The Division shall determine eligibility of any child assigned to the Division by a juvenile court pursuant to A.R.S. § 8-242. If deter-

mined ineligible, the Division shall immediately refer the matter to the Department's Administration for Children, Youth, and Families.

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-404. Eligibility under ALTCS**

- A. The Division shall refer individuals with developmental disabilities who may be eligible for the Arizona Long-term Care System (ALTCS) to the Arizona Health Care Cost Containment System Administration (AHCCCS) to determine eligibility under ALTCS.
- B. The Division shall not provide services, other than emergency services as provided under R6-6-502, to an individual who has been referred for ALTCS eligibility determination until that determination has been completed.
- C. Applicants who voluntarily refuse to cooperate in the ALTCS eligibility process are not eligible for Division services pursuant to A.R.S. § 36-559.

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-405. Documentation and Verification**

The applicant shall provide documentation of the following:

- 1. Residency.
  - a. All applicants shall sign an affidavit stating current residency and intent to remain in Arizona.
  - b. An applicant shall show written proof of Arizona residency by providing one of the following types of documents:
    - i. Rent or mortgage receipt, or lease in the applicant's name showing the residential address;
    - ii. Non-relative landlord statement indicating the applicant's name and address as well as the landlord's name and address and telephone, if available;
    - iii. Applicant's Arizona driver's license;
    - iv. Applicant's Arizona motor vehicle registration;
    - v. Signed employment statement from applicant's non-relative employer;
    - vi. Utility bill in the applicant's name indicating the applicant's address;
    - vii. Current phone directory showing applicant's name and address;
    - viii. United States Post Office records which show the applicant's name and address;
    - ix. A current city directory showing the applicant's name and address;
    - x. Certified copy of a church membership or enrollment record which indicates the applicant's current name and address; or
    - xi. Certified copy of a school record which indicates the applicant's current address; or
  - c. If an applicant has made all reasonable efforts to obtain documented verification as described in subsection (1)(b) and has been unsuccessful, the affidavit signed by the applicant attesting to the applicant's present residence and intent to remain in Arizona shall be sufficient.
- 2. Age.

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- a. An applicant shall provide proof of age of the person to receive services by the following:
- Alien documents;
  - Federal or state census records;
  - Hospital records of birth;
  - Copy of birth certificate;
  - Military records;
  - Notification of birth registration;
  - Religious records showing age or date of birth;
  - Dated school records showing age or school records showing date of birth;
  - Affidavit signed by the licensed physician, licensed midwife or other health care professional who was in attendance at the time of the birth, attesting to the date of birth; or
  - U.S. Passport.
- b. If an applicant has made all reasonable efforts to obtain documented verification as described in subsection (2)(a) and has been unsuccessful, an affidavit signed by the applicant shall be sufficient to verify age of person to receive services.
3. Health Insurance Coverage. An applicant shall provide information regarding current health insurance which relates to the individual for whom application is being made as provided in R6-6-1301 *et seq.*
4. Income. The Division shall require documentation of income as provided in R6-6-1201 *et seq.*

**Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed, new Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3).

**R6-6-406. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-407. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-408. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-409. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-410. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-411. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-412. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-413. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**R6-6-414. Repealed****Historical Note**

Adopted effective February 2, 1989 (Supp. 89-1). Section repealed effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2).

**ARTICLE 5. REPEALED****R6-6-501. Repealed****Historical Note**

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-501 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-502. Repealed****Historical Note**

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-502 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-503. Repealed****Historical Note**

Repealed effective February 2, 1989 (Supp. 89-1). New Section adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Amended effective September 30, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-3). Section R6-6-503 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-504. Repealed****Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-504 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

**R6-6-505. Repealed****Historical Note**

Adopted effective June 7, 1993, under an exemption from A.R.S. Title 41, Chapter 6 (Supp. 93-2). Section R6-6-505 repealed by final rulemaking at 24 A.A.R. 2013, effective August 24, 2018 (Supp. 18-2).

36-552. Developmental disabilities function; expenditure limitation

- A. The department shall function as the developmental disabilities authority for the state of Arizona.
- B. No provisions of this chapter shall be construed to give the department control of lawful activities of other governmental agencies or of activities of the universities or colleges of this state in the field of developmental disabilities, unless by specific contract or agreement therefor.
- C. Subject to annual legislative appropriation and other available funding, the department shall provide a wide variety of developmental disability programs and services throughout the state in response to the wide range of developmental disability conditions, the capabilities of persons with developmental disabilities and the presence of other disabling conditions for persons with developmental disabilities.
- D. The department may contract with other state agencies and with private agencies to provide the developmental disabilities program or service.
- E. The total amount of state monies that may be spent in any fiscal year by the department for developmental disabilities services pursuant to this chapter shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This chapter shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-554. Powers and duties of director

A. The director shall:

1. Be responsible for developing and annually revising a statewide plan and initiating statewide programs and services for persons with developmental disabilities in locations where the programs and services are necessary, which shall include:

(a) Child services, which may include infant stimulation, developmental training for pre-school children and special education at Arizona training program facilities for school-age, children with developmental disabilities residing at Arizona training program facilities who do not attend public school.

(b) Adult services, in coordination with the vocational rehabilitation services of the department, which may include but not be limited to job training and training and adjustment services, job development and placement, sheltered employment and other nonvocational day activity services for adults.

(c) Residential services, including various community residential settings, Arizona training program facilities and state operated service centers which provide varying levels of supervision in accordance with the developmental disability levels of the persons placed at such settings, facilities or centers. The department shall contract with private profit or nonprofit agencies to provide appropriate residential settings for persons with developmental disabilities which provide for regular assistance and supervision of such persons and which provide varied developmental disability programs and services on or near the community residential setting.

(d) Resource services, which may include comprehensive evaluation services, information and referral services and outpatient rehabilitation and social development services. The department in providing developmental disability programs and services shall whenever practicable utilize qualified private contractors. In selecting private contractors, the department shall utilize those contractors which can clearly demonstrate an ability to perform such contract in accordance with standards and specifications adopted by the department.

2. Establish standards, provide technical assistance, and supervise all developmental disability programs and services operated by or supported by the department.

3. Coordinate the planning and implementation of developmental disability programs and activities, institutional and community, of all state agencies, provided this shall not be construed as depriving other state agencies of jurisdiction over, or the right to plan for, control, and operate programs that pertain to developmental disability programs but that fall within the primary jurisdiction of such other state agencies.

4. Periodically assess the effectiveness of the quality assurance system as required by 42 Code of Federal Regulations section 434.34 as it pertains to developmental disabilities programs.

5. License community residential settings pursuant to this chapter.

6. Develop rules establishing a procedure for handling complaints about community residential settings.

7. Inform in writing every parent or guardian of a client with a developmental disability residing at or transferring to a community residential setting of the complaint handling procedure.

8. As new community residential settings are developed over a period of time, reduce the clientele at Arizona training program facilities to those persons with developmental disabilities who are required to be in Arizona training program facilities because the community lacks an appropriate community residential setting that meets their individual needs or whose parents or legal guardians want them in an Arizona training program facility.

9. In conjunction with the division, individuals with developmental disabilities and their families, advocates, community members and service providers, develop, enhance and support environments that enable individuals with developmental disabilities to achieve and maintain physical well-being,

personal and professional satisfaction, participation as family and community members and safety from abuse and exploitation.

10. Do all other things reasonably necessary and proper to carry out the duties and the provisions of this chapter.

11. Adopt rules regarding procurement procedures similar to those found in title 41, chapter 23.

B. Programs and services offered pursuant to subsection A, paragraph 1 of this section shall be provided in cooperation with public and private resources that can best meet the needs of persons with developmental disabilities and that are located in the community and in proximity to the persons being served.

C. The director may:

1. Establish nonresidential outpatient programs for placement, evaluation, care, treatment and training of persons with developmental disabilities residing in the community who are not eligible for public school programs, and who do not have access to other state supported programs providing equivalent services.

2. Develop cooperative programs with other state departments and agencies, political subdivisions of the state, and private agencies concerned with and providing services for persons with developmental disabilities.

3. Contract for the purchase of services with other state and local governmental or private agencies. Such agencies are authorized to accept and expend funds received pursuant to such contracts.

4. Stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the prevention of developmental disabilities and improved methods of care and training for persons with developmental disabilities.

5. Apply for, accept, receive, hold in trust or use in accordance with the terms of the grant or agreement any public or private funds or properties, real or personal, granted or transferred to it for any purpose authorized by this chapter.

6. Make and amend rules from time to time as deemed necessary for the proper administration of programs and services for the treatment of persons with developmental disabilities, for the admission of persons with developmental disabilities to the programs and services and to carry out the purposes of this chapter.

#### 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 (P.L. 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 is judicially noticed.

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

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

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

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

18. Establish a focal point for addressing the issue of hunger in this state 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. The department shall provide a copy of this report to the secretary of state.

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 (d) 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 percent of the rate.

(b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the department shall pay one hundred percent of the rate.

(c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the department shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. 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, cable operators and video service providers.

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 this state and after considering each of the following factors:

1. The obligor's financial resources.

2. The cost of further enforcement action.

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

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

**DEPARTMENT OF AGRICULTURE**  
Title 3, Chapter 6, Article 1, Marketing



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** Originally July 7, 2020, carried to August 4, 2020

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

**FROM:** Council Staff

**DATE:** June 19, 2020

**SUBJECT:** ARIZONA DEPARTMENT OF AGRICULTURE  
Title 3, Chapter 6, Article 1

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### Summary

**Note:** *This five-year review report was previously considered at the June 30, 2020 Study Session and July 7, 2020 Council Meeting. At the July 7, 2020 Council Meeting, the Council voted to table this rulemaking to the July 28, 2020 Study Session and August 4, 2020 Council Meeting.*

This Five-Year Review Report (5YRR) from the Department of Agriculture (Department) relates to rules in Title 3, Chapter 6, Article 1, regarding Marketing. Article 1 consists of two rules, R3-6-101 and R3-6-102. R3-6-101 describes the application and fee requirements for a person manufacturing or distributing a consumable product in Arizona. R3-6-102 describes the fee requirements for a phytosanitary certification applicant.

In the previous 5YRR the Department intended to amend R3-6-101 to address consistency issues with other rules and statutes. In this 5YRR the Department intends to amend R3-6-101 for those same reasons. The Department indicates they did not previously complete the action because it did not believe the rule would qualify for an exemption from the moratorium. The Department did not propose a course of action in the last 5YRR for R3-6-102.

## **Proposed Action**

The Department is proposing to amend R3-6-101 to improve its consistency with other rules and statutes. In a follow up conversation with the Department, it indicates it will work with the Governor's office to determine if the rule qualifies for an exemption. If the Department can get an exemption to the moratorium, it states the rulemaking could be completed by September 2021. Council staff finds the length of the time frame concerning especially because the Department is enforcing the rules partially as written and encourages the Council to discuss with the Department if the time frame can be shortened.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department has determined that the economic impact of the rules under review do not differ from the initial economic impact of the rules when the rules were initially adopted. Fees generated by the rule pay the administrative costs to produce the certificates of sale for goods. The rule does not directly affect employment, consumers, or state revenues.

The stakeholders include the Department, Arizona agricultural producers, consumers of products, and the general public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes the rules imposes the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. The fees generated from certificates of sale cover the administrative cost of to produce the certificates. The rule does not directly affect employment, consumers, or state revenues.

The Department has determined that while producers of products do bear the economic burden of this administrative cost, this cost is outweighed by the extra time staff takes to process these applications and shipments. The Department intends to revise the rules to clarify the requirements for when a certificate of sale is needed.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicated it received criticism for R3-6-101 that there is a requirement to provide documentation for products freely sold in the country. Council staff asked for further clarification of the criticism and the Department indicated that it may not have been in writing, but that it is a regular complaint the Department

receives. The Department believes this criticism is rather odd considering individuals are asking for a certificate of free sale based on the product being freely sold here, and so it is necessary for the Department to verify that an item is freely sold by asking them for proof. Council staff encourages the Council to ask the Department questions about the criticism the Department received on this particular issue. There were no written criticisms for R3-6-102.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Department indicates the rules are clear, concise, and understandable, but it states that R3-6-101 is partially effective/consistent with all state and federal statutes and rules. Currently, the rule instructs an applicant to provide a social security number. This requirement was added to comply with A.R.S. §§ 25-320(P) and 25-502(K) regarding child support. Since a certificate of free sale is not covered by those child support laws, the Department states that it has no other authority to require a social security number. The Department does not mandate disclosure of a social security number in this rule pursuant to the federal Privacy Act of 1974. The Department indicates R3-6-102 is effective/consistent with state and federal statutes and rules.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates that R3-6-101 is partially enforced as written. The Department does not require a social security number and will issue duplicate certificates anytime while the original certificate is in effect and not just during the first three months. The Department also does not charge for standard postage. Lastly, although the rule does not require, the Department requires one of the three invoices required by the rule to be from Arizona. The Department indicates R3-6-102 is enforced as written.

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

The Department charges an additional \$50 fee for a state-issued, Federal Phytosanitary Certificate for international export of commodities from AZ. The Department indicates this is allowed per the formula in the Code of Federal Regulations (CFR) which references states as agents for USDA in this certification process. In addition, a \$6 administrative fee is charged, which is established by USDA-APHIS-PPQ for the use of the electronic Phytosanitary system. The Department states this charge is collected along with the state's \$50 fee as noted, and the administrative fee remitted to USDA-APHIS-PPQ. The Department believes this does not exceed any Federal authorities as the administrative fee is imposed by the USDA and is separate from the CFR fee formula.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The Department does not believe the certificate of free sale in R3-6-101 or the phytosanitary certificate in R3-6-102 has the characteristics of a license or general permit as defined in A.R.S § 41-1001. Council staff believes the rules require a license pursuant to the definition of a license under A.R.S § 41-1001. Regardless, the Department is in compliance with A.R.S. § 41-1037(A)(2) because it is authorized to issue certificates of free sale under A.R.S. § 3-109.02. Due to the fact that phytosanitary certificates are issued under federal regulation, a general permit is not technically feasible under A.R.S. § 41-1037(A)(3).

**Conclusion**

As mentioned above, the Department is planning to amend one rule to improve its overall effectiveness and consistency with other rules and statutes. The Department plans to complete a rulemaking by September 2021. Council staff recommends approval of this report.

DOUGLAS A. DUCEY  
Governor



MARK W. KILLIAN  
Director

# Arizona Department of Agriculture

1688 W. Adams Street, Phoenix, Arizona 85007  
PHONE (602) 542-0990 FAX (602) 542-4290

April 24, 2020

Nicole Sornsin, 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 3, Chapter 6

Dear Ms. Sornsin:

Enclosed please find the Arizona Department of Agriculture's five-year review report for A.A.C. Title 3, Chapter 6.

The Office reviewed all the rules in the article. It does not intend for any rules to expire under A.R.S. § 41-1056(J).

The Office certifies that it is in compliance with A.R.S. § 41-1091.

Please contact (602) 542-7186 or [cmccormack@azda.gov](mailto:cmccormack@azda.gov) with any questions about this report.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Killian", is written over a light blue circular stamp.

for Mark Killian, Director  
Arizona Department of Agriculture

**ARIZONA DEPARTMENT OF AGRICULTURE**

**2020 FIVE-YEAR REVIEW REPORT**



**TITLE 3. AGRICULTURE**

**CHAPTER 6. DEPARTMENT OF AGRICULTURE –  
OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION**

**ARTICLE 1. MARKETING**

**Arizona Department of Agriculture  
Office of Commodity Development and Promotion  
2020 Five-Year Review Report  
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**Arizona Department of Agriculture  
Office of Commodity Development and Promotion  
2020 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 Arizona Department of Agriculture's report for the rules listed under A.A.C. Title 3, Chapter 6, Office of Commodity Development and Promotion was scheduled to be submitted to GRRC by December 31, 2019, but a 120 day extension was granted. Section II of this document contains the Department's report on these rules.

**Arizona Department of Agriculture  
Office of Commodity Development and Promotion  
2020 Five-Year Review Report  
II. Five-Year Review Report  
Title 3. Agriculture  
Chapter 6. Office of Commodity Development and Promotion  
Article 1. Marketing**

**1. Statutory authority**

General: A.R.S. § 3-107(A)(1) and (B)(3)

Specific: Laws 2019, 1st Reg. Sess., Ch. 272, § 11; A.R.S. § 3-109.02

**2. Objective**

R3-6-101: The objective is to establish application requirements and the fee for obtaining a certificate of free sale. A certificate of free sale is available for Arizona agricultural products that are generally and freely sold in domestic channels of trade.

R3-6-102: The objective is to establish the fees that must be paid to obtain certification documents from the Department stating that regulated commodities and nursery stock meet the entry requirements for domestic shipments.

**3. Analysis of effectiveness in achieving the objective**

R3-6-101:

The rule is partially effective in achieving its objective.

The requirement to provide 3 different invoices is intended to allow the Department to establish that a product is generally and freely sold in the United States, but the Department believes some applicants have submitted invoices that show nothing more than casual sales to relatives or friends. This requirement also fails to specify that at least one invoice demonstrate that the product was manufactured or distributed in Arizona. The Department believes requiring an applicant to provide an Arizona transaction privilege tax number would help establish that the applicant is truly engaged in business in Arizona.

The Department would also like to be able to require applicants to provide a product label, upon request, particularly for vitamins and supplements.

The Department also thinks it would be wise to supplement the rule to indicate that certain requests do not qualify for a certificate of free sale to provide certainty to the public and reduce oral complaints about denied requests. For example, new products that are manufactured just for export do not qualify. Also, certificates will only be issued using the

name of the product sold domestically, not a different export name even when the product is the same.

R3-6-102:

The rule is effective in achieving its objective. It was recently amended by 20 A.A.R. 2457, September 5, 2014 to make the fees applicable during the current fiscal year. The fee for state phytosanitary certification is established at \$50 plus \$10 per additional lot and the fee for federal phytosanitary certification is \$50. In addition to the \$50 fee for federal phytosanitary certification paid for the benefit of the Department, applicants pay a federal administrative user fee for the federal government as required by federal law. The federal administrative user fee is currently \$6 for shippers who use the “Phytosanitary Certificate Issuance and Tracking System” paper applications and \$12 for those who do not. *See* 7 CFR 354.3(g)(3)(i).

4. **Consistency**

R3-6-101:

The rule is mostly consistent with all state and federal statutes and rules. Currently, the rule instructs an applicant to provide a social security number. The requirement was added to ensure compliance with A.R.S. §§ 25-320(P) and 25-502(K) regarding child support. However, a certificate of free sale is not covered by those child support laws, and the Department has no other authority for requiring disclosure of a social security number. So, pursuant to the federal Privacy Act of 1974, the Department cannot mandate disclosure of a social security number in this rule.

The rule is consistent with the Arizona Department of Commerce's authority to issue certificates of free sale. The Department of Agriculture issues certificates for consumable products and the Department of Commerce issues certificates for non-consumable products.

R3-6-102:

The rule is consistent with state and federal statutes and rules. *See* 7 C.F.R. Part 354. The rule is consistent with other certification programs conducted by the Department which charge similar fees. *See* 3 A.A.C. Chapter 4.

5. **Agency enforcement policy**

R3-6-101:

The rule is partially enforced as written. A social security number is not required. Also, the Department presently issues duplicate certificates anytime while the original certificate is in effect (1 year) and not just during the first three months. In addition, the Department

does not charge for standard postage. Finally, the Department requires one of the three invoices required by the rule to be from Arizona, although the rule does not specify that.

R3-6-102:

This rule is enforced as written.

6. **Clarity, conciseness, and understandability**

The rules in this Article are clear, concise and understandable.

7. **Written criticisms**

R3-6-101:

There has been criticism of the requirements of having to provide documentation that products are freely sold in our country. Our response was this has been the standard since the rules were first adopted. It only makes sense if you are obtaining a COFS that proof be provided the product is actually sold.

R3-6-102:

There has been no written criticism.

8. **Economic, small business, and consumer impact comparison**

R3-6-101:

The economic impact is consistent with what was estimated in the economic, small business and consumer impact statement prepared with the original adoption of this rule in 1999. The Department is providing a service to any person who sells a consumable product. Fees generated by the rule pay the administrative costs to produce the certificates. The rule does not directly affect employment, consumers, or state revenues.

R3-6-102:

This rule was adopted by exempt rulemaking and no economic impact statement was prepared. The actual economic, small business, and consumer impact of the rule is comparable to that of R3-6-101. These certificates are provided as a service to shippers of plants and plant products. They are issued to meet the entry requirements for domestic shipments of regulated commodities and nursery stock. Many Arizona nursery stock producers/exporters participate in the voluntary Arizona Certified Nursery Program to receive a General Nursery Stock Certification that meets or exceeds the National Plant Board standards of pest freedom and generally satisfies most domestic entry requirements. Some states also require certification for specific pest threats. Fees generated by the rule

pay the administrative costs to produce the certificates. The rule does not directly affect employment, consumers, or state revenues.

**9. Analysis submitted by another person**

None.

**10. Completion of course of action from prior review**

The Department intended to amend R3-6-101 to address the issues identified above. Due to the rulemaking moratorium the Department never completed the action. The Department did not request an exception to the moratorium.

The Department did not plan any action with regard to R3-06-102.

**11. Determination that rule imposes least burden and costs**

The Department believes the rules imposes the least burden and costs to persons regulated by the rules necessary to achieve the underlying regulatory objective. The rules establish basic requirements for certifications. The Department that incorporating the proposed changes to R3-6-101 will further reduce the burden of the rule.

R3-6-102 charges a minimal amount to cover the Department's administrative cost. The applicant for state phytosanitary certification informs the Department how many lots the applicant has, and the Department issues a separate certificate for each lot. Some applicants elect to artificially divide their shipment into several small lots because if the state of import rejects part of a lot, the entire lot is rejected. By designating multiple lots, the shipper can reduce the risk of having its entire shipment rejected. However, shippers' practice of designating multiple lots for a single shipment creates extra work for the Department in issuing multiple certificates, which is another reason for continuing this fee for another fiscal year.

**12. Determination that rules are not more stringent than corresponding federal law**

R3-6-101 sets out the requirements for a state certificate of free sale. One can also obtain a certificate of free sale from the Food and Drug Administration. Section 801(e)(4) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§321-397 requires the FDA to issue certificates for human drugs and biologics, animal drugs, and devices that either meet the applicable requirements of the Act and may be legally marketed in the United States or may be legally exported under the Act although they may not be legally marketed in the United States. FDA is not required to issue certificates for food, including animal feeds, food and feed additives, and dietary supplements, or cosmetics. However, since foreign governments may require certificates for these types of products, FDA provides the service as resources permit. The requirements under R3-6-101 are not more stringent than the FDA requirements.

For R3-6-102, the corresponding federal administrative user fee is set out in 7 CFR 354.3(g)(3)(i). This rule incorporates the corresponding federal fee by reference and is not more stringent than federal law.

13. **Compliance with A.R.S. § 41-1037 for rules adopted after July 29, 2010 that require a permit**

The rules do not require a permit.

14. **Proposed course of action**

The Department intends to amend R3-6-101 consistent with the issues identified above. Given the criticism of the rule the AZDA is in the preliminary stages of conducting a rulemaking to incorporate these changes. The Department anticipates that the rulemaking will be completed within 12-18 months. The Department does not anticipate requesting an exception to the moratorium.

The Department intends to maintain R3-6-102 as currently written.

September 30, 2019

*Title 3, Chapter 6, consisting of Section R3-6-101, adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).*

*Former Title 3, Chapter 6, Article 1, Sections R3-6-101 through R3-6-109, renumbered to Title 3, Chapter 2, Article 9, Sections R3-2-901 through R3-2-909 (Supp. 91-4).*

**ARTICLE 1. MARKETING**

*Article 1, consisting of Section R3-6-101, adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).*

Section	
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R3-6-102.	Phytosanitary Certification
	2

**ARTICLE 2. JOINT-VENTURES**

*Article 2, consisting of Sections R3-6-201 through R3-6-204, expired under A.R.S. § 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).*

*Article 2, consisting of Sections R3-6-201 through R3-6-204, adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2).*

Section	
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## CHAPTER 6. DEPARTMENT OF AGRICULTURE - OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

## ARTICLE 1. MARKETING

**R3-6-101. Certificate of Free Sale**

- A. Any person manufacturing or distributing a consumable product in Arizona and who wants to sell it domestically or abroad, may apply to the Department for a Certificate of Free Sale. If an applicant is a subsidiary of a corporation, the application will be accepted only from the parent company. The application shall contain:
1. The name, address, telephone, and facsimile number of the company;
  2. The name of the contact person;
  3. A list of the consumable products manufactured, distributed, or sold in Arizona;
  4. The printed name, signature, and social security number of the responsible party;
  5. The country of export, if applicable;
  6. The fee prescribed in subsection (B);
  7. Copies of 3 different invoices or bills-of-lading from the 3 months preceding the application; and
  8. The purchaser's telephone number cited on each invoice or bill-of-lading.
- B. Fees.
1. Certificate of Free Sale: \$25 for each 100 products, plus the cost of postage;
  2. Duplicate certificates, if requested within 3 months of the original certificate issue: \$1 per page, plus the cost of postage.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 45, effective December 8, 1999 (Supp. 99-4).

**R3-6-102. Phytosanitary Certification**

- A. During fiscal year 2020, a person who applies to the Department for phytosanitary certification shall pay the following fee:
1. For state certification, \$50 for the first lot plus \$10 for each additional lot per Department site trip.
  2. For federal certification, \$50 plus the federal administrative user fee set out in 7 CFR 354.3(g)(3)(i), revised January 1, 2016, which is incorporated by reference and does not include any later amendments or editions. A copy of the incorporated material is available for inspection at the Department, 1688 W. Adams St., Phoenix, Arizona 85007 or may also be viewed at <http://www.gpo.gov/fdsys/>.
- B. This Section does not apply to phytosanitary certification under A.A.C. R3-4-301.

**Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 1339, effective June 29, 2010 (Supp. 10-2). Amended by exempt rulemaking at 17 A.A.R. 1765, effective July 20, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 2066, effective August 2, 2012 (Supp. 12-3). Amended by exempt rulemaking at 19 A.A.R. 3146, effective September 14, 2013 (Supp. 13-3). Amended by exempt rulemaking at 20 A.A.R. 2457, effective July 24, 2014 (Supp. 14-3). Amended by exempt rulemaking pursuant to Laws 2015, Ch. 10, § 14, at 21 A.A.R. 2412, effective July 3, 2015 (Supp. 15-3). Amended by final exempt rulemaking at 23 A.A.R. 1943, effective August 9, 2017 (Supp. 17-2). Amended by final exempt rulemaking at 24 A.A.R. 2226, August 3, 2018 (Supp. 18-3). Amended by final exempt rulemaking at 25 A.A.R. 2088, August 27, 2019 (Supp. 19-3).

## ARTICLE 2. JOINT-VENTURES

**R3-6-201. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

**R3-6-202. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

**R3-6-203. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

**R3-6-204. Expired****Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 1573, effective April 5, 2000 (Supp. 00-2). Section expired under A.R.S. 41-1056(E) at 11 A.A.R. 867, effective December 31, 2004 (05-1).

## CHAPTER 6. DEPARTMENT OF AGRICULTURE - OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

## TITLE 3. AGRICULTURE

3 A.A.C. 6

[R3-6-102. Phytosanitary Certification](#)[2](#)

## Title 3

## CHAPTER 6. DEPARTMENT OF AGRICULTURE - OFFICE OF COMMODITY DEVELOPMENT AND PROMOTION

## Supp. 19-3

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of July 1, 2019 through

**18-3, 1-2 pages**

Name: G. John Caravetta, Associate Director  
Address: Arizona Department of Agriculture  
1688 W. Adams  
Phoenix, AZ 85007  
Telephone: (602) 542-0996  
Fax: (602) 542-0922  
E-mail: [icaravetta@azda.gov](mailto:icaravetta@azda.gov)

**Questions about these rules? Contact:**

### 3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.

11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.

12. 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.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.

3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.

4. Cooperate with the office of tourism in distributing Arizona tourist information.

5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.

6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.

7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.

8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-109.02. Office of commodity development and promotion; fees; commodity promotion fund; definition

A. The office of commodity development and promotion shall provide for programs to stimulate, educate, encourage and foster the production and consumption of Arizona agricultural products domestically and abroad.

B. The office may provide authorized or contracted administrative functions for councils and commissions established by law.

C. The director may collect a fee, which the director shall establish by rule, for the issuance of certificates of free sale. The amount of the fee shall not exceed the actual cost of preparing the certificate of free sale. All monies collected from the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the commodity promotion fund.

D. The commodity promotion fund is established. The fund consists of all monies collected pursuant to any promotional service provided to industry under this section and not supported by general fund appropriation, and monies received pursuant to section 3-107, subsection B, paragraph 8. The director shall administer the fund. On notice from the director, 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 fund. Monies in the fund are:

1. Continuously appropriated to the department for the purposes of this section.
2. Exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. For the purposes of this section, "certificate of free sale" means a document that authenticates a commodity that is generally and freely sold in domestic channels of trade.

**DEPARTMENT OF ADMINISTRATION**

Title 2, Chapter 1, Article 4, Emergency Telecommunication Services Revolving Fund



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 13, 2020

**SUBJECT: DEPARTMENT OF ADMINISTRATION**  
Title 2, Chapter 1, Article 4, Emergency Telecommunication Services Revolving Fund

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### **Summary**

This Five-Year Review Report (5YRR) from the Arizona Department of Administration (Department) relates to all rules in Title 2, Chapter 1, Article 4 related to the Emergency Telecommunications Services Revolving Fund (Fund). The Department, through the 9-1-1 program (Program), provides Arizona's 84 primary public safety answering points (PSAPs) with funding, technology, and operational support and guidance. The Department's primary responsibility is oversight of the distribution and use of revenue collected from a statewide excise tax on telecommunications services. *See* A.R.S. § 42-5252. Revenue from the excise tax is deposited in the Fund. These rules outline the procedures for administering and disbursing monies deposited in the Fund.

In its previous 5YRR on these rules, approved by the Council on May 5, 2015, the Department indicated it had no plan to amend the rules in Article 4.

### **Proposed Action**

The Department indicates that the program rules were last updated in 2000 and are outdated. The Department states the rules reference technologies and processes that are outdated

and leave the program challenged to meet contemporary demands. In 2019, the Department indicated it contracted with Mission Critical Partners, LLC for an assessment of the 9-1-1 Program. The Department states that assessment informed this report and a copy of the assessment is included for your reference. In response, the Department proposes to amend all rules in Title 2, Chapter 1, Article 4 to improve clarity, conciseness, understandability, consistency, and enforcement as outlined in more detail in the report.

However, the Department indicates that the underlying authorizing statute must be amended to address current technology and needs before amending the applicable rules. In response to follow-up from Council staff, the Department indicated that the Department has not developed the plan to amend the statute at this time. The Department indicated they are currently in the process of collecting data to inform the changes that will need to be made in both the rules and the statute. The Department anticipates that it will be about a year before a plan is put in place.

1. **Has the agency analyzed whether the rules are authorized by statute?**

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

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department provides Arizona with funding, technology, operational support, and guidance needed to run the 9-1-1 program. The Department has not prepared an EIS since the rule's last amendment in 2000, and was unable to locate it for reference. The Department oversees the distribution and use of revenue from the excise tax the funds the 9-1-1 program, which has a major impact for the state and protects public health and safety.

The stakeholder's include the Department, the Police, and general public served by the 9-1-1- program.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that the cost associated with the rules is minimal, and is the least costly method for achieving their objective. The Department has determined that the majority of the costs for the 9-1-1 program are imposed on the geographic area served by the 9-1-1 program, and that these costs are outweighed by the benefit to public health and safety.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

The Department indicates the rules are mostly clear, concise, and understandable except for the following rules as outlined in more detail in their report:

**R2-1-401**

**R2-1-404**

**R2-1-406**

**R2-1-408**

The Department indicates the rules are mostly consistent with other rules and statutes except for the following rules:

**R2-1-403:** Discusses obtaining two bids when purchasing equipment but does not reference following the state or local procurement processes.

**R2-1-409:** In subsection (A)(4), the amount available for consulting services or administrative costs is inconsistent with statute (See A.R.S. § 41-704(B)(2)).

**R2-1-410:** Statute indicates monies in the Fund are to be distributed to political subdivisions (See A.R.S. § 41-704(A)(1)). However, R2-1-410 describes a two-step reimbursement process in which the Department makes payment to a vendor.

The Department indicates the rules are mostly effective in achieving their underlying regulatory objective except for the following rules as outlined in more detail in the report:

**R2-1-402:** Requires a 9-1-1 planning committee be established but omits inclusion of many entities with an interest or relevant expertise. It also is unclear who or what is responsible for ensuring a planning committee is established.

**R2-1-404:** There is no requirement that a service plan be updated.

**R2-1-407:** Addresses system design standards but fails to include technical service standards. It also fails to address call routing across county, state, and international borders. The issue of cybersecurity is not addressed in the rules.

**R2-1-411:** No information is provided about criteria used to apportion the Fund to the various system planning committees.

**Has the agency analyzed the current enforcement status of the rules?**

The Department indicates that the rules are mostly enforced as written except for the following rules as outlined in more detail in the report:

**R2-1-403:** Discusses a service area based on the geographical boundaries of a telephone exchange area. Telephone exchanges are not relevant in the current technology environment. The rule also fails to provide notice of the need to follow state procurement guidelines or use other competitive procurement processes.

**R2-1-408:** Requires a PSAP to receive at least 300 emergency calls per month to receive funding. However, the Program currently provides funding to multiple PSAPs that do not meet that threshold.

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

The Department indicates the rules are not more stringent than corresponding federal law. Specifically, the Department states the Wireless Communications and Public Safety Act of 1999 took effect with the purpose of improving public safety by encouraging and facilitating prompt deployment of a nationwide communications infrastructure for emergency services. Regulations at 47 CFR Part 9 establish service requirements and conditions for a 9-1-1 system. The requirements apply to telecommunication providers but do not apply to these rules.

**7. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Department indicates that none of the rules was made after July 29, 2010 and none requires issuance of a permit.

**8. Conclusion**

The Department indicates that the rules are mostly clear, concise, understandable, consistent, effective, and enforced. However, the Department indicates that the rules have not been updated since 2000 and that some of the rules could be improved, as outlined above. However, the Department indicates that the underlying authorizing statute must be amended to address current technology and needs before amending the applicable rules. The Department indicated they are currently in the process of collecting data to inform the changes that will need to be made in both the rules and the statute. The Department anticipates that it will be about a year before a plan is put in place. Council staff recommends approval of this report.

Douglas A. Ducey  
Governor



Andy Tobin  
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION**

Arizona Strategic Enterprise Technology - Arizona 911 Program  
100 NORTH FIFTEENTH AVENUE • SUITE 403  
PHOENIX, ARIZONA 85007  
(602) 542-1500

June 9, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 400  
Phoenix, Arizona 85007

**RE:** Arizona Department of Administration  
A.A.C. Title 2, Chapter 1, Article 4  
Emergency Telecommunication Services Revolving Fund

Dear Ms Sornsin:

Please find attached the 5YRR for the referenced rules for the Arizona 9-1-1 Program. The report is due by June 26, 2020 under an approved extension. The Department certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Karen Ziegler at 602-542-0911 or [karen.ziegler@azdoa.gov](mailto:karen.ziegler@azdoa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "J.R. Sloan".

J.R. Sloan  
State Chief Information Officer  
Arizona Strategic Enterprise Technology  
Arizona Department of Administration

**Five-year-review Report**  
**A.A.C. Title 2. Administration**  
**Chapter 1. Department of Administration**  
**Submitted for August 4, 2020**

INTRODUCTION

Across the U.S., 9-1-1 programs are in transition from legacy technologies, which are voice-based and rely on wireline telephones, to Next Generation technologies, which rely on wireless and Voice over Internet Protocols. The Department, through the 9-1-1 program (Program), provides Arizona’s 841 primary public safety answering points (PSAPs) with funding, technology, and operational support and guidance. The Department’s primary responsibility is oversight of the distribution and use of revenue collected from a statewide excise tax on telecommunications services (See A.R.S. § 42-5252). Revenue from the excise tax is deposited in the Emergency Telecommunications Service Fund (Fund).<sup>2</sup>

The current Arizona 9-1-1 funding statute, A.R.S. § 41-704, was last revised in 2005. It describes how Arizona’s 9-1-1 Fund is managed and how monies are distributed. It describes processes and references that are no longer valid and is not in alignment with Program practices or nationwide best practices. The Program rules were last updated in 2000 and are outdated. The rules reference technologies and processes that are outdated and leave the Program challenged to meet contemporary demands. In 2019, the Department contracted with Mission Critical Partners L.L.C. for an assessment of the 9-1-1 Program. The assessment<sup>3</sup> informed this report.

Statute that generally authorizes the agency to make rules:      A.R.S. § 41-704(A)(1)

1. Specific statute authorizing the rule:

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1 There are additional PSAPs that operate in the state without receiving funding.

2 The 9-1-1 excise tax is \$.20/month for wireline, wireless, and VoIP services. The prepaid wireless tax is eight-tenths of one percent of the gross proceeds derived from retail sale of prepaid wireless telecommunications service. This is the lowest 9-1-1 fee assessed by any state. The tax and earned interest generates approximately \$18 million each year.

3 [https://az911.gov/sites/default/files/media/Arizona\\_911%20Assessment%20Report\\_FINAL\\_082319\\_0.pdf](https://az911.gov/sites/default/files/media/Arizona_911%20Assessment%20Report_FINAL_082319_0.pdf)

R2-1-401. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-402. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-403. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-404. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-405. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-406. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-407. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-408. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-409. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-410. A.R.S. §§ 41-704, 42-5252, and 42-5402

R2-1-411. A.R.S. §§ 41-704, 42-5252, and 42-5402

2. Objective of the rules:

R2-1-401. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R2-1-402. Establishment of 9-1-1 Planning Committee: The objective of the rule is to specify that funding eligibility requires a planning committee consisting of representatives of local first responding agencies that submit a service plan.

R2-1-403. Submission of Service Plan: The objective of the rule is to specify the information to include in a service plan.

R2-1-404. Certificate of Service Plan Approval: The objective of the rule is to specify that a certificate of service plan approval is issued when the assistant director approves a service plan.

R2-1-405. Resubmitting of a Service Plan: The objective of the rule is to specify a service plan that is disapproved may be amended and resubmitted for approval.

R2-1-406. Modification of an Approved Service Plan: The objective of the rule is to provide guidance about making a material change to a service plan.

R2-1-407. 9-1-1 System Design Standards: The objective of the rule is to establish minimum design standards for a 9-1-1 system.

R2-1-408. 9-1-1 Operational Requirements: The objective of the rule is to establish minimum operational requirements for a 9-1-1 system.

R2-1-409. Funding Eligibility: The objective of the rule is to specify the costs of a 9-1-1 program that are available for reimbursement.

R2-1-410. Method of Reimbursement: The objective of the rule is to specify the method of reimbursement for various services and materials provided to the 9-1-1 system.

R2-1-411. Allocation of Funds: The objective of the rule is to specify how monies are allocated for 9-1-1 service costs.

3. Are the rules effective in achieving their objectives? No

R2-1-402 requires a 9-1-1 planning committee be established but omits inclusion of many entities with an interest or relevant expertise. It also is unclear who or what is responsible for ensuring a planning committee is established.

R2-1-404: There is no requirement that a service plan be updated.

R2-1-407 addresses system design standards but fails to include technical service standards. It also fails to address call routing across county, state, and international borders. The issue of cybersecurity is not addressed in the rules.

R2-1-411: No information is provided about criteria used to apportion the Fund to the various system planning committees.

4. Are the rules consistent with other rules and statutes? No  
R2-1-403 discusses obtaining two bids when purchasing equipment but does not reference following the state or local procurement processes.

R2-1-409: In subsection (A)(4), the amount available for consulting services or administrative costs is inconsistent with statute (See A.R.S. § 41-704(B)(2)).

Statute indicates monies in the Fund are to be distributed to political subdivisions (See A.R.S. § 41-704(A)(1)). However, R2-1-410 describes a two-step reimbursement process in which the Department makes payment to a vendor.

5. Are the rules enforced as written? No  
R2-1-403 discusses a service area based on the geographical boundaries of a telephone exchange area. Telephone exchanges are not relevant in the current technology environment. The rule also fails to provide notice of the need to follow state procurement guidelines or use other competitive procurement processes.

R2-1-408 requires a PSAP to receive at least 300 emergency calls per month to receive funding. However, the Program currently provides funding to multiple PSAPs that do not meet that threshold.

6. Are the rules clear, concise, and understandable? No  
R2-1-401 and R2-1-404 refer to the Assistant Director of the Information Services Division. The position does not exist.

R2-1-401 indicates all public or private safety agencies in a geographic area are to establish a planning committee. However, there is no indication of whom is to take the lead to ensure this is done.

R2-1-404 indicates the assistant director shall approve or disapprove a service plan but doesn't indicate the criteria to be used.

R2-1-406 requires the planning committee to provide notice of a material change to an approved service plan but does not define what constitutes a material change. The Section also requires the proposed modification be approved but doesn't indicate the criteria for approval.

R2-1-408: Many areas of the state have a secondary PSAP and this Section indicates funding is provided to them. However, the term is not defined. Reference is made to a remote print site but the term is not defined.

7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

The rules were last amended in 2000. The economic, small business, and consumer impact statement prepared at that time was not available for review. The 9-1-1 Program is funded by an excise tax on telecommunications services. The Department's primary responsibility is oversight of the distribution and use of revenue collected from the excise tax. The Department distributes annually millions of dollars in support of the 9-1-1 Program, which has a major economic impact for the state and protects public health and safety. This benefit is achieved with minimal costs for the various geographical areas served by the 9-1-1 Program. The minimal costs result from the following rule requirements imposed on each geographic area to be served by the 9-1-1 Program:

- Establish a planning committee and prepare and submit to the Department for approval a service plan;
- Ensure the 9-1-1 program complies with minimum standards for design and operation;
- Modify the service plan when there is a material change; and
- Seek reimburse only for specified costs using a specified method of reimbursement.

Distribution of monies in the emergency telecommunication services revolving fund is accomplished using a grant solicitation and award process. PSAPs receiving grants enter into an agreement with the Department. The agreement contains provisions regarding reports. The grant process is outside the scope of these rules but subject to requirements at A.R.S. Title 41, Chapter 24, regarding solicitation and awarding of grants.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

Yes

In a 5YRR approved by the Council on May 5, 2015, the Department indicated it had no plan to amend the rules in Article 4.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

Although the statute and rules governing the 9-1-1 Program are outdated, the Department is able to fulfill the statutory requirement that it oversee distribution and use of revenue collected from an excise tax on telecommunications services. In spite of the issues identified in this report, the rules are helpful in fulfilling this statutory requirement. The Department believes, subject to the limitations described in this report, the benefits of the rules outweigh their costs and impose the least burden and costs on geographic areas served by the 9-1-1 Program. The benefit for the geographic areas is the millions of dollars the Department is able to distribute annually. The costs and burdens result from the required responsibilities identified in item 8.

12. Are the rules more stringent than corresponding federal laws? No

The Wireless Communications and Public Safety Act of 1999 took effect with the purpose of improving public safety by encouraging and facilitating prompt deployment of a nationwide, communications infrastructure for emergency services. Regulations at 47 CFR Part 9

establish service requirements and conditions for a 9-1-1 system. The requirements apply to telecommunication providers but do not apply to these rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

None of the rules was made after July 29, 2010 and none requires issuance of a permit.

14. Proposed course of action:

The Department intends to make new rules or amend all of the rules in Article 4. However, the Department believes it is not a wise use of limited state resources to do a rulemaking until the authorizing statute is amended to address current technology and needs.



**MissionCriticalPartners**  
Because the Mission Matters

## Arizona 9-1-1 Program Assessment

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### Final Report

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PREPARED MARCH 2019 FOR  
ARIZONA DEPARTMENT OF ADMINISTRATION

[MissionCriticalPartners.com](http://MissionCriticalPartners.com)

Dallas Office | 502 N. Carroll Ave. Suite 120 | Southlake, TX 76092 | 888.8.MCP.911 or 888.862.7911

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## Executive Summary

The Arizona State 9-1-1 Program (Program) is undergoing a period of significant transition. In July of 2018, the Program (previously known as the Arizona State 9-1-1 Office) was moved from the Arizona Department of Administration (ADOA), Arizona Strategic Enterprise Technology (ASET) Office, into the ADOA Office of Grants and Federal Resources (GFR). The move was made to better align the Program's current responsibilities concerning the oversight of the use of State 9-1-1 funds for the deployment of Next Generation 9-1-1 (NG9-1-1) technologies by the public safety answering points (PSAPs) across the state, and the GFR program responsibilities for planning for the nationwide public safety broadband network<sup>1</sup> (NPSBN) or FirstNet and the State's broadband deployment strategy. In addition to moving the Program, the long-tenured Program Director retired in December of 2018 and other staff retired or left State employment by February of 2019. In light of the significant transitional activities, GFR determined it was an appropriate time to conduct an assessment of the Program's operation to identify strengths and weaknesses and opportunities for improvement in the Program's service to the Arizona 9-1-1 community.

The assessment focused on the following areas:

- Arizona 9-1-1 Program Responsibilities
- Public Safety Communications Governance
- Current statutory and regulatory environment
- Current policies
- Current funding environment

The responsibilities of the Program are foundationally established by state statute. Rules for the Program are then developed and placed into the Administrative Code using the statute as the basis. The statute and rules assessment are summarized later in the report, but the Program's responsibilities are as follows:

- Adopt rules and procedures for administering and distributing 9-1-1 revenue
- Review and approve requests for payment for 9-1-1 system operations
- Make recommendations to the legislature regarding the telecommunication services excise tax amount
- Coordinate and oversee state-level 9-1-1 contracts
- Stakeholder communication and outreach
- Federal and State level reporting

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<sup>1</sup> The nationwide public safety broadband network was borne of the Middle Class Tax Relief and Job Creation Act of 2012 (Act). The Act created the First Responder's Network Authority (FirstNet) as an independent authority within the National Telecommunications Information Administration (NTIA) under the US Department of Commerce. FirstNet was given license to 20 MHz of radio spectrum in the 700 MHz band and charged with building and operating a nationwide broadband network dedicated to public safety. Through an open procurement process, FirstNet entered into a partnership with AT&T to build and operate the NPSBN for 25 years.

During stakeholder interviews, the Program received mixed reviews from the PSAP community. Some felt they were very helpful in guiding the State in deployment of NG9-1-1 technologies, while others felt there was a disconnect between them and the Program in how funding was approved for various initiatives. The Program does not have a clearly defined Mission Statement and also lacks clear policies on how it operates, and how decisions are made. This has contributed significantly to these mixed reviews among stakeholders, as some decisions appear to have been made based on subjective, rather than objective, criteria. This has led to an imbalance in fund distributions where some PSAPs have received a disproportionate amount of funding based on any objective standard formulaic approach commonly used across the country. Whenever such an imbalance occurs, it will naturally lead to the feeling among stakeholders of a division between “haves and have nots”. Recommendations to mitigate this imbalance are summarized later in the funding section of the report.

The Program has been the recipient of two federal 9-1-1 grants to assist in enhancing 9-1-1 service across the State. The first was the Ensuring Help Needed Arrives Near Callers Employing 911 Act of 2004 (ENHANCE 911 Act). The State received approximately \$1.25 million from that grant in 2009, however, during the grant period the State became ineligible for the grant due to State legislation that diverted funds from the 9-1-1 surcharge fund to the general fund. Diversion of 9-1-1 dedicated funds from 9-1-1 is a violation of grant conditions, and therefore the State had to return all grant funds received. The second grant will be received in 2019 as a result of the Middle Class Tax Relief and Job Creation Act of 2012. The State will receive approximately \$2.36 million from this grant and is in the process of developing appropriate activities for which to utilize the grant. It is imperative that no diversion of 9-1-1 funds occur during this grant period so as not to jeopardize the State’s ability to utilize the grant funding to enhance 9-1-1 service to the citizens.

At the national level, the Program has been an active member of the National Association of State 9-1-1 Administrators (NASNA), which provides great resources for networking, education, and exchange of ideas among State 9-1-1 programs to develop best practices for operating statewide 9-1-1 programs.

Recommendations for Program Responsibilities and Operations
Develop a Policies and Procedures Manual
<ul style="list-style-type: none"> <li>• Revise Organizational Roles and Responsibilities to Include:               <ul style="list-style-type: none"> <li>– Program Manager</li> <li>– Project Manager</li> <li>– Technical Systems Manager</li> <li>– GIS Manager</li> <li>– Fiscal Specialist</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Expand Staff Duties to Include               <ul style="list-style-type: none"> <li>– Legislative</li> <li>– Policy</li> <li>– Funding</li> </ul> </li> </ul>

Recommendations for Program Responsibilities and Operations
<ul style="list-style-type: none"> <li>– Governance</li> <li>– Technology</li> <li>– Information and Content Management</li> <li>– Operations</li> <li>– Communication and Outreach</li> </ul>
<ul style="list-style-type: none"> <li>• Additional Staff Roles               <ul style="list-style-type: none"> <li>– Cybersecurity</li> <li>– 9-1-1 Public Information Officer</li> <li>– Training Coordinator</li> <li>– Quality Assurance Analyst</li> </ul> </li> </ul>

At this time, the State does not currently have a functioning statewide public safety communications governance body. The lack of governance inhibits the ability to engage stakeholders from across all public safety disciplines which can be impacted by 9-1-1. The ADOA has developed a draft executive order for the establishment of a statewide interoperability executive committee (SIEC) and are currently working with the governor's office in an attempt to shepherd that order toward execution. The SIEC would include sub-committees for all public safety communications disciplines, including 9-1-1, land mobile radio (LMR), and broadband. It is highly recommended that the State form a statewide public safety communications governance body. The platform provided by the SIEC greatly facilitates the engagement with stakeholders to obtain input and buy-in on policies, rules, and operating procedures of the Program. In addition to governance, it is recommended the Program revise and evolve the Arizona State 9-1-1 Plan, which was last updated in 2017, and also develop a communications plan for communicating with stakeholders.

Recommendations for Program Governance
<ul style="list-style-type: none"> <li>• Establish an SIEC and 9-1-1 Subcommittee</li> </ul>
<ul style="list-style-type: none"> <li>• Revise and Evolve the Arizona State 9-1-1 Plan</li> </ul>
<ul style="list-style-type: none"> <li>• Develop a Communications Plan (internal/external) with following elements:               <ul style="list-style-type: none"> <li>– Regular communications with the State Leadership and key stakeholders</li> <li>– Regular communications with the PSAPs and System Administrators</li> <li>– Engage influential members and stakeholder of the public safety community to ensure they are contributing to the projects and programs within the Program</li> <li>– Improve two-way communications with the ADOA leadership, the Governor's Office, the SIEC, the media, the general public, etc., especially in times of emergencies or disasters</li> <li>– Identify and use the most effective methodology for communicating messages to the different audiences</li> <li>– Provide a public education plan that is executable and efficient</li> </ul> </li> </ul>

The enabling statute for the Program operations is found at *Arizona Revised Statutes §41-704, Emergency Telecommunications Services; Administration; Revolving Fund*<sup>2</sup>. The statute requires updating as it describes processes and references which are no longer valid and may not be in alignment with the Program's practices or the State's administrative rules. The administrative rules are contained in the Arizona Administrative Code<sup>3</sup> and were initially developed in 1985 and last updated in 2000. The rules are found to be limiting and outdated as they refer to specific technologies and processes which are not currently relevant.

In addition, there are distinct misalignments between the rules and the statute. Most significantly, is the statute mandates 9-1-1 funding be disbursed through political subdivisions of the State, but the rules allow for the current practice of disbursing funds to State level entities, federal entities, and private entities. Additionally, the Program has not been complying with the rules as currently established. Following are examples:

- The rules establish a threshold for PSAPs to receive funding; they must receive at least 300 calls per month, but the Program is currently providing funding to multiple PSAPs which do not meet this minimum threshold. Additionally, this threshold is low and does not facilitate efficiency among PSAPs. It is recommended this threshold be reviewed and raised to a more appropriate level of at least 1,000 calls per month.
- The rules contain definitions of various terms at the beginning, including the definition of a PSAP as a center which receives emergency 9-1-1 calls. Within the rules, however, there is a reference to "secondary PSAP", which is not defined but the implication is this is a center which performs dispatch functions but does not directly receive 9-1-1 emergency calls. The Program has been funding some of these secondary PSAPs which seems out of alignment with the objective of enhancing 9-1-1 service since these centers do not receive 9-1-1 calls. It is recommended this practice cease. Note: this is not meant to discontinue funding for Secondary PSAPs that are designated as a back-up facility for a Primary PSAP (e.g., Arizona Department of Public Safety, Northern and Southern Divisions).

The State statute was compared to the National 9-1-1 Program's *Guidelines for State NG911 Legislative Language*<sup>4</sup>, a compendium of best practices regarding model statute language. The statute was assessed based on these guidelines and multiple recommendations are made in the appropriate section below concerning aligning the statute with the National Program's guidelines. (Refer section 5.2.2).

Cost recovery by wireless service providers is still in effect by statute and requested by at least one wireless service provider, but is no longer required based on an Federal Communication Commission (FCC) ruling. Paying cost recovery has hampered Phase II deployment across the state, resulting in some areas that do not receive Wireless Phase II location information. Cost recovery should cease, and those monies repurposed to improve 9-1-1 service at the state and local level.

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<sup>2</sup> <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/00704.htm>

<sup>3</sup> Title 2, Administration, Chapter 1, Department of Administration (Authority: A.R.S. '38-613 et. Seq.) Article 4. Emergency Telecommunication Services Revolving Fund. Amended effective June 14, 1990. Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000.

<sup>4</sup> [https://www.911.gov/pdf/Guidelines\\_for\\_State\\_NG911\\_Legislative\\_Language.pdf](https://www.911.gov/pdf/Guidelines_for_State_NG911_Legislative_Language.pdf), version 2.0, 2018.

Recommendations for Statute Changes
<ul style="list-style-type: none"> <li>• Align the statute and code</li> </ul>
<ul style="list-style-type: none"> <li>• Align the Program statute with National 911 guidelines</li> </ul>
<ul style="list-style-type: none"> <li>• Remove legacy terminology</li> </ul>
<ul style="list-style-type: none"> <li>• Eliminate payment of cost recovery</li> </ul>
<ul style="list-style-type: none"> <li>• Require an annual audit</li> </ul>
<ul style="list-style-type: none"> <li>• Ensure liability protection for the Program</li> </ul>
<ul style="list-style-type: none"> <li>• Ensure liability protection for the NG9-1-1 technology providers</li> </ul>
<ul style="list-style-type: none"> <li>• Evolve or dissolve the role of the System Administrator               <ul style="list-style-type: none"> <li>– For efficiency sake, maintain the administrator role but align it by county and eliminate systems consisting of only one PSAP</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Assess multi-line telephone system (MLTS) legislation</li> </ul>

An assessment of the Code was also conducted and determined the State needs to update the code to reflect the current environment, and also the Program comply with the code in the way it conducts its operations.

Recommendations for Administrative Code Changes
<ul style="list-style-type: none"> <li>• Update the rules to appropriately reflect the current environment as well as the future state</li> </ul>
<ul style="list-style-type: none"> <li>• Require a 9-1-1 Strategic Plan</li> </ul>
<ul style="list-style-type: none"> <li>• Revise and require System Service Plan</li> </ul>
<ul style="list-style-type: none"> <li>• Codify funding eligibility and process               <ul style="list-style-type: none"> <li>– This should be done to remove the current arbitrary and subjective nature for determining funding eligibility</li> </ul> </li> </ul>
<ul style="list-style-type: none"> <li>• Require interagency agreement</li> </ul>

Current policies were reviewed and it was discovered that the Program does not have a Policy Manual which defines its method of operating or decision making process. This is a critical component to any program and needs to be rectified as soon as possible. Having clear and transparent policies, and following those policies, serve to enhance the credibility of the Program and how it operates so the stakeholders have confidence the Program is performing its responsibilities in an open and fair manner.

Recommendations for Program Policy Changes
<ul style="list-style-type: none"> <li>• Establish Policy-Making Methodology</li> </ul>
<ul style="list-style-type: none"> <li>• Develop a Program Policy Manual</li> </ul>
<ul style="list-style-type: none"> <li>• Clarify and Communicate 9-1-1 Fund Distribution Policy</li> </ul>
<ul style="list-style-type: none"> <li>• Identify and Address New Policy Needs</li> </ul>

The current 9-1-1 funding model within the State was examined and determined that currently, Arizona has the lowest 9-1-1 assessment of any state which currently has such assessment at \$.20 per line for wireline, wireless, and Voice over Internet Protocol (VoIP), and 8/10 of 1 percent for prepaid transactions. The Program imposed a funding moratorium several years ago on funding any new PSAPs but has since accrued a \$8 million fund balance. The \$8 million fund balance is counter-intuitive from the perspective of the very low assessment and the moratorium and indicates that appropriate disbursement of funds was not taking place. This can be directly attributed to the aforementioned lack of clear policies resulting in a very subjective and arbitrary decision-making process for fund disbursement. There is currently no formulaic approach to determining funding levels. It is recommended one of the first items developed is an appropriate formula for fund disbursement. Recommendations for consideration are as follows:

- **Population-Based Formula:** Funding for eligible PSAPs is based on population served by each PSAP.
- **Call Volume Formula:** Funding is based on call volume data provided by each PSAP.
- **County-Based Approach:** Similar to population-based, funding would be allocated by population served by each county and the county would be tasked with distributing it between all PSAPs in that county (states that have used this approach were doing so to force consolidation to one PSAP per county).
- **Hybrid Approach:** Some states use a population or call volume formula for a percentage of the fund distribution (e.g., 50%, 65%, 83%, etc.), with the remaining portion of the fund allocated via a competitive grant program. States that use this method will provide funding equally for all PSAPs and then fund (typically capital) program using a needs-based, prioritized criteria to award the remaining portion of the fund. In this manner, states can prioritize and incentivize outcomes such as shared equipment purchases. Some states will limit the amount or frequency of grant request.
- **Emergency Funding Request:** Some states will reserve a certain portion of their fund to be used to assist PSAPs with emergency situations (a request to repair or replace PSAP equipment that without the funding, would severely impair the PSAP's ability to answer or process 9-1-1 calls). Emergency

funding request would be approved on a case-by-case basis and typically would have additional restrictions (e.g., reduction of future grant awards) to prevent misuse of this exceptional situation.

- **Statewide Projects:** Although not currently supported by state statute, some states will reserve a portion of the 9-1-1 fund for statewide projects, such as NG9-1-1 and implementing a statewide Emergency Services IP Network (ESInet). These statewide projects benefit all PSAPs across the state and have been found to be an efficient and cost-effective use of 9-1-1 revenue.

The Program also needs to identify appropriate opportunities to disburse the funds accumulated in the fund balance to provide improved 9-1-1 service to the citizens. A study needs to be undertaken to examine the sufficiency of the current 9-1-1 fee. There also is no statute currently which protects the 9-1-1 funds from being diverted for other uses. Specific language regarding this is highly recommended.

One important practice which needs revised is the current practice of the Program directly paying invoices on behalf of the PSAPs to service providers. Service providers currently contract directly with PSAPs for services because a statewide requests for proposals (RFP) process was never conducted. The State has no contractual relationship with the vendors; therefore, making payments to these vendors is not in accordance with state procurement and accounting policies. This can be alleviated in one of two ways: the PSAPs assume responsibility for paying the invoices directly to the service providers and submit for fund reimbursement from the Program; or the Program publish a statewide RFP for NG9-1-1 services and enter into a contractual relationship with the selected providers. It is recommended the Program pursue the second option to better streamline the process and also to ensure services are provided in a consistent manner.

Specific recommendations concerning funding is provided below.

Recommendations for Funding Changes
• Develop and implement a process for determining funding needs and 9-1-1 fee
• Enhance fund protections
• Establish PSAP Funding Eligibility Criteria
• Review Technology Design and NG9-1-1 Options
• Initiate RFP for statewide ESInet
• Document the projected 9-1-1 budget
• Develop funding distribution methodology
• Develop and document funding policy
• Revise invoice payment policy
• Apply funding distribution methodology – (short term and long term)

# 1 Background

Both in the State of Arizona and across the United States, 9-1-1 is in a period of transition from legacy technologies to current technologies. Some states have begun implementing Next Generation 9-1-1 (NG9-1-1) to improve the critical service they provide to those people who call 9-1-1 in their greatest time of need. As the State's 9-1-1 Program (Program) has started to make this transformational shift, it was determined that a review of the Program's technology, operations, policy, funding requirements, authorization, and current rules should be undertaken to identify strengths and weaknesses and develop recommendations for improvement. The resulting assessment and recommendations are described in this document for action by the Program, to create efficiencies and improvements in service for all those who live, work, or visit the State of Arizona and have a need to contact 9-1-1 for an emergency.

The Program provides public safety answering points (PSAPs, or 9-1-1 centers) across the State with funding, technology, and operational support and guidance. The primary responsibility of the Program is oversight of the distribution and use of the revenue collected via a statewide excise tax collected on telecommunications services and deposited into the Emergency Telecommunications Service Fund.

Historically, the Program, (known previously as the Arizona State 9-1-1 Office) was under the Arizona Department of Administration (ADOA), Arizona Strategic Enterprise Technology (ASET) Office – the state's information technology (IT) Department. Recently, the Program was moved to the Office of Grants and Federal Resources (GFR) under ADOA, to better align the Program with the State's FirstNet program and other important broadband initiatives.

With the recent Program staff changes and the move to GFR, Mission Critical Partners (MCP) was engaged to provide an assessment of the 9-1-1 Program in the following areas:

- Current responsibilities and projects
- Current and future staffing needs
- Current legislative authority and rules governing the Program
- Current funding authority in statute

To accomplish this task, MCP interviewed Program staff; reviewed Program documentation and processes; reviewed the funding model, statutes and codes; conducted stakeholder interviews within various regions; and utilized the Report for National 9-1-1 Assessment Guidelines to aid in identifying success measurements and gaps.

## 1.1 Arizona 9-1-1 Landscape

The Arizona PSAP community is comprised of city, county, state, tribal, federal and private PSAPs. There are 74 primary<sup>5</sup> and 10 secondary<sup>6</sup> PSAPs that are currently funded by the Program. A Primary PSAP is defined as a PSAP to which the 9-1-1 call is routed directly to the 9-1-1 Center. A Secondary PSAP is a PSAP to which 9-1-1 calls are transferred to from a primary PSAP. They are represented by 9-1-1 system administrators who represent each PSAP's 9-1-1 regional planning committee and serve as the single point of contact between the PSAPs and the Program. Seventeen 9-1-1 system administrators exist across the state with 14 representing the PSAPs within their county's jurisdiction, while three represent a single PSAP: Gila River Indian Community, Hildale-Colorado City Communications Center and the City of Winslow PSAP.

The 9-1-1 system administrators perform the work—described in Arizona Administrative Code (Code) R2-1-402<sup>7</sup>—required on behalf of the 9-1-1 planning committee to support the local PSAPs within each geographical region. The 9-1-1 system administrator role involves the following tasks:

1. Submit an annual service plan on behalf of the PSAPs
2. Submit 9-1-1 service system certification
3. Approve and submit vendor invoices on behalf of the PSAPs
4. Represent PSAP needs and concerns to the 9-1-1 Program and share information from the Program to the PSAPs

In addition to the city and county PSAPs, the infrastructure includes:

- **Tribal PSAPs:** Several of the state's 21 federally recognized tribes do not have their own PSAPs. The Gila River Indian Community, Salt River-Pima Police Department, Fort McDowell Police Department, , and the Whiteriver Police Department have PSAPs funded by the Program. Several tribal PSAPs exist in the state that answer and dispatch their own 9-1-1 calls and have nontraditional configurations used to receive 9-1-1 calls. but are not funded by the Program. These include Navajo Nation, Hopi Tribe, San Carlos Tribe, Colorado River Indian Tribe, Tohono O'odham Nation, and Fort Mohave Tribe.
- **Federal PSAPs:** Four federal PSAPs are funded by the Program—Grand Canyon National Park, Glen Canyon National Park, Fort Huachuca Fire Department and Luke Airforce Base Fire Department.
- **Private Ambulance Agencies:** There is one funded private ambulance company—American Medical Response (AMR, formerly known as Rural Metro Ambulance) with 3 secondary PSAPs.
- **State PSAPs:** There are five funded state agency PSAPs—Arizona State University, University of Arizona, Arizona Department of Public Safety—Southern, Central and Northern Region.

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<sup>5</sup> A public safety answering point, or PSAP, is a communications facility operated on a 24-hour basis that is responsible for receiving 9-1-1 calls and notifying, dispatching, transferring, or relaying 9-1-1 calls to an appropriate public or private safety agency (as defined in Arizona Administrative Code R2 1-401 [17]).

<sup>6</sup> A secondary PSAP only receives transferred 9-1-1 calls and does not take the initial 9-1-1 call.

<sup>7</sup> Article 4 consisting of Sections R2-1-401 through R2-1-409 adopted effective June 22, 1985. Amended effective June 14, 1990. Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000.

## 1.2 Next Generation 9-1-1

The original voice-based 9-1-1 infrastructure was designed and implemented more than 40 years ago. This legacy infrastructure worked well when the majority of 9-1-1 calls were made by individuals using wireline telephones. As new technologies, such as wireless and Voice over Internet Protocol (VoIP), were introduced, the 9-1-1 community adapted to fit these services into the legacy technology. Today it is estimated that more than 80 percent of 9-1-1 calls are placed by wireless devices. The legacy infrastructure is aging, technology and equipment are reaching (or have reached) end of life, and capabilities no longer meet the needs and expectations of citizens. NG9-1-1 enhances the 9-1-1 infrastructure with a shift to Internet Protocol (IP) networks and standards-based technologies that support the needs of PSAPs and residents in need of emergency response.

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### WHAT IS NEXT GENERATION 9-1-1 (NG9-1-1)?

Next Generation 9-1-1 is a secure, IP-based, open-standards system comprised of hardware, software, data, and operational policies and procedures, that processes all types of emergency calls, including voice, text, data, and multimedia information, and delivers the emergency information to the appropriate 9-1-1 center based on the location of the caller.

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NG9-1-1 supports the use of voice, text, data, video, and images with emergency requests for assistance and delivers more-accurate location information from the caller to the PSAP. This is accomplished by using geographic information systems (GIS) in the routing of 9-1-1 calls. NG9-1-1 also provides PSAPs with greater redundancy and resiliency in the event of high call volume, outages and when transferring 9-1-1 calls to another jurisdiction—improving planning and information dissemination between PSAPs.

NG9-1-1 brings much opportunity but presents the need for change. It introduces a risk of exposure to cybersecurity threats, changes to the operational process, and a need for new and modified policies, procedures, and training. As such, PSAP leadership, especially in small or rural PSAPs across the country, are more dependent on state 9-1-1 programs to provide guidance and technical expertise.

Legacy 9-1-1 service (including Basic 9-1-1, Enhanced 9-1-1, and Wireless 9-1-1<sup>8</sup>) was deployed PSAP by PSAP in Arizona. The result is that 9-1-1 equipment and software across the state are at different levels and functionality. This makes the transition from legacy 9-1-1 to NG9-1-1 difficult for the Program to manage without an established strategic plan and implementation plan that outlines priorities for the state.

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<sup>8</sup> Basic 9-1-1 provides telephone number with the voice call; Enhanced 9-1-1 provides the telephone number and street address of the caller; Wireless 9-1-1 provides the approximate location of the caller including initial latitude and longitude coordinates.

### 1.2.1 NG9-1-1 Solutions

Arizona has two primary local exchange carriers (LECs) that provide 9-1-1 service: CenturyLink and Frontier. Both have presented their NG9-1-1 solutions to PSAPs and the 9-1-1 Program. A majority of PSAPs in the state are transitioning to CenturyLink's NG9-1-1 managed services solution. This solution includes an Emergency Services IP Network (ESInet), new IP-capable equipment, software upgrades and maintenance, and call-handling equipment. The Maricopa Region (MR9-1-1) also has initiated deployment of NG9-1-1 using a solution supported by various vendors but controlled by the local government consortium.

### 1.2.2 Geographic Information Systems (GIS)

In NG9-1-1, the entirety of the 9-1-1 call process is spatially enabled. The link between GIS and NG9-1-1 will replace the antiquated static location methodology of legacy 9-1-1 systems with dynamic location services necessary to find today's transient 9-1-1 caller. GIS also will be used to route the call from the 9-1-1 caller to the most appropriate PSAP. These complex, real-time GIS demands require capabilities far beyond those of commercial mapping applications such as Google or Bing maps. To meet the stringent requirements of NG9-1-1, GIS must be a core component within NG9-1-1.

The implementation of a large-scale, statewide capability like GIS requires a tremendous level of effort, significant stakeholder coordination and collaboration, as well as adequate and sustainable funding. State 9-1-1 programs need to plan for a comprehensive GIS program that complies with nationally accepted standards that incorporates the needs of both 9-1-1 and state and local GIS professionals.

## 1.3 Text-to-9-1-1

In compliance with a settlement agreement for a federal lawsuit brought against the state, the Program set aside dedicated funding to support PSAP requests for deployment of text-to-9-1-1 and provide equal access to 9-1-1 for all. In June 2018, the Program published a text-to-9-1-1 implementation plan that strongly encourages PSAPs to deploy the service as quickly as possible and seven systems have applied for text-to-9-1-1 funding as of this writing. The Program provides project management support as needed and requires that PSAPs be capable of Wireless Phase II service and have a wireless 9-1-1 administrator to qualify for funding. Twenty-seven PSAPs in the Maricopa Region 9-1-1 and the Lake Havasu Police Department have successfully deployed text-to-9-1-1, even without text-to-9-1-1 funding from the State.

## 1.4 Funding

The 9-1-1 Program receives approximately \$17.5 million in annual revenue. Every wireline, wireless and VoIP service provider doing business in Arizona is required to collect a telecommunication services excise tax in the amount of \$0.20 on each telephone service account.<sup>9</sup> Every seller of prepaid wireless services is

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<sup>9</sup> A.R.S. §Title 42 Chapter 5 Section 42-5252 Levy of Tax

required to submit an amount equal to 8/10 of 1 percent of the gross income from the retail sale of prepaid wireless telecommunications service that occurs in the state.<sup>10</sup>

The revenue in this fund “shall be used for the necessary and appropriate equipment or service for implementing and operating emergency telecommunication services through subdivisions of this state.”<sup>11</sup> Per statute, the Program must adopt rules and procedures that specify exactly how this is to be accomplished.

As PSAPs transition to NG9-1-1 and new functionality is introduced and enabled, the cost to manage and maintain 9-1-1 technology will change and likely increase. Several factors impact the NG9-1-1 funding needs:

- Both the legacy and NG9-1-1 infrastructures will need to be maintained until the NG9-1-1 transition is complete
- Technology change brings the ability for more data to enter the PSAP and a need for more storage capacity to support the change in the information being presented to the PSAP
- Cybersecurity comes at an additional cost to reduce vulnerabilities on the network and in the PSAP
- Staffing needs also will change as the responsibilities and expectations of telecommunicators change with the shift in information being presented as part of a request for emergency assistance
- Once the transition is complete, expensive legacy infrastructure can be retired, which reduces cost while improving resiliency and enhancing PSAP backup flexibility

## 1.5 Grants and Federal Resources

With a key role of the Program being responsible for the receipt and distribution of 9-1-1 monies, the recent move of the Program to GFR provides benefits and additional resources for the Arizona 9-1-1 community. With GFR managing Arizona’s FirstNet Program and involved in the Rural Broadband Initiative, the transition provides alignment with these programs important to the State’s first responders and the Rural Broadband Initiative will be key in the connectivity of rural PSAPs.

The GFR provides policy, planning and program support to state agencies, local governments and non-profits organizations to maximize grant resources in the state. The GFR Division’s extensive experience in managing a variety of funding opportunities through a well-defined grant process improves efficiencies for the 9-1-1 community and provides structure and transparency to the distribution of 9-1-1 funds to local units of government.

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<sup>10</sup> A.R.S. §Title 42 Chapter 5 Section 42-5402 Levy of Tax

<sup>11</sup> A.R.S. §Title 41 Chapter 5 Section 41-704 Emergency telecommunications services; administration; revolving fund

## 2 Methodology

To achieve the assessment's objectives, MCP took steps to gain an understanding of the 9-1-1 Program's current state (projects, responsibilities, processes, staffing, etc.) in order to make recommendations for improvements to the program. The effort started with discussions with ADOA staff and MCP reviewed numerous documents related to the following:

- The current governance structure
- Arizona state statutes, rules and policies
- The State's 9-1-1 funding model, formula and processes

MCP conducted 18 one-hour phone interviews or face-to-face meetings with relevant stakeholders across Arizona. Using an ADOA-approved interview guide, MCP held discussions to collect local-level input about the 9-1-1 Program.

In addition, MCP compared the relevant governance, statutes and administrative code with the *Report for National 9-1-1 Assessment Guidelines*,<sup>12</sup> a comprehensive benchmark developed by the National 9-1-1 Program.

After the policy, statute, and code reviews, staff discussions, and stakeholder interviews, MCP developed a series of recommendations to support changes to the Program that will improve 9-1-1 service administration and support throughout Arizona.

## 3 Arizona 9-1-1 Program Responsibilities

Responsibilities in state 9-1-1 programs vary from state to state, and each state's authority over its 9-1-1 program is different based on governance, legislation, administrative code, and historical activity. It is relevant to assess the 9-1-1 Program's structure, roles, responsibilities and alignment to optimize productivity. As stakeholder and Arizona residents' expectations evolve with 9-1-1 technology advancement, some responsibilities will need to evolve.

### 3.1 Current State

#### 3.1.1 9-1-1 Program Responsibilities

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<sup>12</sup> These guidelines, developed through a collaborative process guided by the National 911 Program, provide uniform goals and benchmarks for the assessment of 9-1-1 programs at the state level. They are used to gauge the status of state and local programs and to identify strengths and areas where more development is needed within the current system. These guidelines illustrate what an effective 9-1-1 program encompasses but does not dictate how to achieve a desired result.

In its current state, the Program is responsible for maximizing the capabilities of the 9-1-1 systems through statewide 9-1-1 coordination and ensuring that state-level functions (as required by authorizing legislation) are carried out. Requirements for the Program include:

- Adopt rules and procedures for administering and distributing 9-1-1 revenue
- Review and approve requests for payment for 9-1-1 system operations
- Make recommendations to the legislature regarding the telecommunication services excise tax amount
- Coordinate and oversee state-level 9-1-1 contracts
- Stakeholder communication and outreach
- Federal and State level reporting

Prior to the move to GFR, the Program staffed four positions: a program manager, two project managers with separate roles, and a program billing specialist. Their responsibilities included:

Role	Responsibilities
<p>Program Manager (State 9-1-1 Administrator)</p>	<ul style="list-style-type: none"> <li>• Administer, direct, and manage the affairs and business of the Program, including completing employee performance evaluations, time reporting and vacation approvals and approving Program expenses and expenditures</li> <li>• Act as the primary point of contact for the Program and the primary liaison for PSAPs</li> <li>• Ensure that the statutory and Code obligations of the program were met, including legislative and Federal Communications Commission (FCC) reporting</li> <li>• Responsibility for oversight of state contracts, requests for proposals (RFPs), and grant requests</li> <li>• Make recommendations on changes to statutory language and Code to reflect the needs of the Program</li> <li>• Act as the representative to the National Association of State 9-1-1 Administrators (NASNA)</li> <li>• Apply for federal grant monies and administer the requirements of all awarded grant program funding</li> </ul>
<p>Project Manager (Network)</p>	<ul style="list-style-type: none"> <li>• Report 9-1-1 network statistics, such as 9-1-1 trunk-busy reports and preventive-maintenance reports</li> <li>• Track budget expenditures versus 9-1-1 fee collection</li> <li>• Perform invoice review and recommend funding authorizations</li> <li>• Oversee legacy 9-1-1 equipment installation to ensure that the vendor(s) performed to contract specifications</li> <li>• Assist with the annual update of the 9-1-1 State Plan</li> </ul>

Role	Responsibilities
Project Manager (Wireless)	<ul style="list-style-type: none"> <li>• Report wireless 9-1-1 statistics reporting</li> <li>• Coordinate with wireless carriers</li> <li>• Monitor 9-1-1 service provider outage reports and 9-1-1 location database integrity</li> <li>• Manage GIS accuracy reporting and data requests</li> <li>• Assist local units of government with GIS support</li> <li>• Identify vendors to assist with GIS projects</li> <li>• Provide communication and outreach to PSAPs</li> <li>• Provide system administrator training and support</li> </ul>
Billing Specialist	<ul style="list-style-type: none"> <li>• Lead all accounting responsibilities for the Program</li> <li>• Track wireless, wireline and VoIP subscriber count reports used by 9-1-1 service providers for billing purposes</li> <li>• Verify the accuracy of 9-1-1 fee submissions made by service providers</li> <li>• Maintain the Program's website content</li> <li>• Develop surveys in support of the Program</li> <li>• Maintain contact lists for PSAPs, vendors, and telecommunication companies</li> </ul>

3.1.2 9-1-1 Program Effectiveness

As part of MCP's data gathering process, surveys and interviews included questions about the Program's effectiveness to gain insight into how the Program was being perceived by 9-1-1 community stakeholders. The Program received many accolades for its support, helpfulness and responsiveness to the 9-1-1 community, despite limited resources. Several of the PSAPs operating on the NG9-1-1 managed services solution felt that the Program was shepherding them, always on the lookout for solutions and new developments that could support 9-1-1 service and PSAPs in Arizona. However, there were several stakeholders who felt the opposite and did not agree with the direction the Program was taking concerning the managed services solution, as well as general oversight and management of the State's 9-1-1 funding.

3.1.2.1 Federal Grant Funding

To date, there have been two federally-funded grant programs available for 9-1-1. The first, authorized under the *Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004* (ENHANCE 911 Act, Pub. L. 108-494), made awards totaling \$41.325 million in 2009 to 30 states and territories. Arizona was initially awarded \$627,067.26 and a supplemental amount of \$623,658.13, for a total of \$1,250,725.39, which equaled 3 percent of all awards made. Unfortunately, during the grant period, the State became ineligible to participate in the program when legislation was passed that transferred 9-1-1 surcharge funds to the Arizona General Fund and was required to return all grant monies that had been received.

The second federal 9-1-1 grant program was established as part of the *Middle Class Tax Relief and Job Creation Act of 2012* (Pub L. 112-96). This legislation, which also established the First Responder Network Authority (FirstNet), included the Next Generation 9-1-1 Advancement Act of 2012, authorizing up to \$115 million as the “NG9-1-1 Implementation Grant Program.” Administered by the National 9-1-1 Program Implementation Coordination Office, Arizona has been allocated \$2,360,070.00 in 2019 to assist in funding the transition to NG9-1-1 technology and is developing the application for submission to the federal grant administrator.

As with the 2009 grant program, grantees are required to “certify that the State has not diverted and will not divert any portion of designated 911 charges imposed by the State for any purpose other than the purposes for which such charges are designated or presented.”

### 3.1.2.2 National-Level Engagement

The Program has been an active member of the National Association of State 9-1-1 Administrators (NASNA)<sup>13</sup>, National Emergency Number Association (NENA) and Association of Public Safety Communications Officials (APCO). The Program benefits from this participation in several ways, including accessing a rich source of resources that help inform, improve, and enhance the Program’s efficiencies, technical and operational knowledge, and a path to share valuable information.

Communication and outreach efforts by the Program have demonstrated great leadership within the 9-1-1 community by sharing the success of Arizona’s NG9-1-1 efforts. For example, in August 2017, the Program presented during the “State of 9-1-1 Webinar Series” for the U.S. Department of Transportation, National 9-1-1 Program. During the webinar, the Program described the successes and lessons-learned by Arizona’s NG9-1-1 deployment experience, serving as a model for other states to follow. Likewise, by attending industry webinars, conferences, and other training events, the Program has brought technical, operational, and policy experience and recommendations back to benefit and advance the State’s 9-1-1 operations.

### 3.1.3 9-1-1 Program Workflow Analysis

MCP requested the Program’s process workflows to analyze how it conducts business and to develop a plan to address any inefficiencies. Historically for such analysis, MCP reviews an organization’s internal administrative policies and procedures manual, which generally explains how work in the unit is performed and by which staff position. The Program does not have such a manual, which made it difficult to assess the Program’s workflows.

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<sup>13</sup> <http://www.nasna911.org/>

The two exceptions found were the recent policy/instructional document created to prepare for the upcoming budget cycle: the *Arizona 9-1-1 Grant Program-FY2020 eCivis Application*<sup>14</sup> and the existing document *Arizona 9-1-1 Budget Standards & Procedures*<sup>15</sup>.

### 3.2 Recommendations

Based on MCP's expertise and review of the state 9-1-1 Program, and leveraging best practices that exist at the national-level, the following recommendations are provided for consideration:

Recommendations for Program Responsibilities and Operations	
3.2.1	Develop a Policies and Procedures Manual
3.2.2	Revise Organizational Roles and Responsibilities
3.2.3	Expand Staff Duties
3.2.4	Future Staff Roles

#### 3.2.1 Develop a Policies and Procedures Manual

As a priority, the Program must develop a clear Mission Statement to define the mission of the Program and then compile a comprehensive list of internal policies and practices concerning the work it performs, down to the details of job responsibilities per staff position. This is especially important due to the recent staff changes and that going forward, the Program will include new staff members. There should be a written policy for every Program responsibility outlined in statute and the Code, as detailed in the Policy section (section 6.2) of this document and other areas of Program administration that require clarity. Once developed, the implementation of a Policies and Procedures Manual must be followed by training of all Program staff, and a defined, regular review (at least annually).

#### 3.2.2 Revise Organizational Roles and Responsibilities

With the transition to GFR, the Program has the opportunity to modernize and increase the functional and operational effectiveness of its organizational structure. Recognizing the changes in mission and priorities, a more functional organizational structure can be adopted to streamline reporting relationships and start the process of revising the relationship with the stakeholder community to ensure the Program's strategic objectives are achieved and sustained. This structure would also help to establish performance objectives for evaluating staff effectiveness.

A proposed organization chart for the Program is included in Figure 1 below.

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<sup>14</sup> [https://grants.az.gov/sites/default/files/media/SystemAdmin\\_application\\_training.pdf](https://grants.az.gov/sites/default/files/media/SystemAdmin_application_training.pdf)

<sup>15</sup> Version 12, Dated: 8/18/2016

<https://aset.az.gov/sites/default/files/media/Budget%20Standards%20and%20Procedures%20v12%202016-8-2016.pdf>

### Grants and Federal Resources

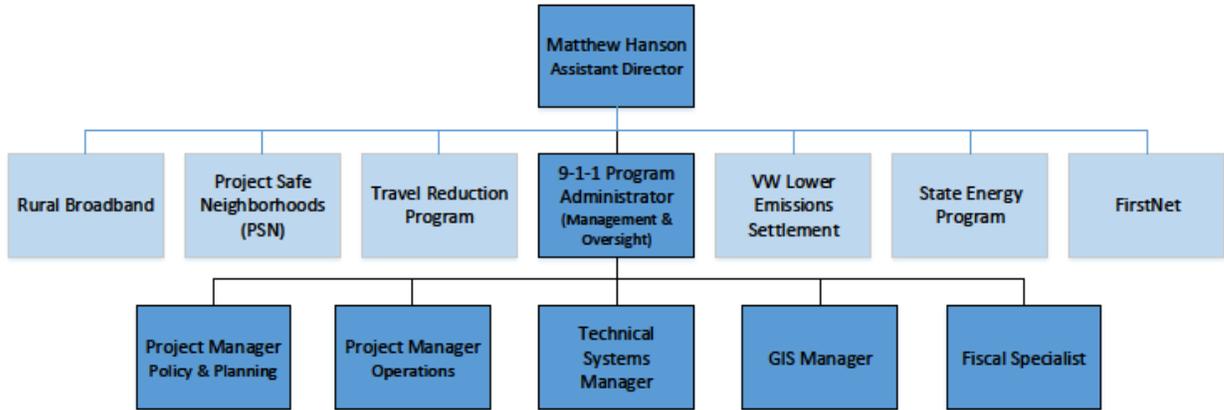


Figure 1: Proposed GFR Organization Chart

Role	Responsibilities
<p>Program Administrator (Management and Oversight)</p>	<ul style="list-style-type: none"> <li>• Focus on the statutory and regulatory changes required to drive 9-1-1 service forward</li> <li>• Collaborate with other state 9-1-1 programs to execute structural changes in legislation and code</li> <li>• Establish Program policies and procedures, a comprehensive governance model and funding methodology, and develop an inclusive NG9-1-1 transition plan with stakeholder input</li> <li>• Prioritize, administer, direct, and manage the affairs and business of the Program by establishing requirements, success metrics, reasonable timeframes for completion, and tracking progress to completion</li> <li>• Act as the primary point of contact for the Program and the primary liaison for PSAPs</li> <li>• Ensure that the statutory and Code obligations of the program were met, including legislative and FCC reporting</li> <li>• Act as the representative to NASNA</li> <li>• Apply for federal grant monies and administer the requirements of all awarded grant program funding</li> </ul>
<p>Project Manager (Planning and Policy)</p>	<ul style="list-style-type: none"> <li>• Assist in development of the Program Policies and Procedures Manual, perform annual review of the Manual, and make recommendations for improvements</li> <li>• Assess NG9-1-1 operational impacts to PSAPs</li> <li>• Collects and analyzes data and information to inform and educate the Program on policy issues, supporting development of effective agency policy that addresses problems or issues</li> <li>• Develop model PSAP operational standards and policies for Arizona's NG9-1-1 transition</li> </ul>
<p>Project Manager (Operations)</p>	<ul style="list-style-type: none"> <li>• Administer, coordinate, and manage all essential operational functions of the Program</li> <li>• Establish operational standards for the agency, making recommendations to improve efficiencies</li> <li>• Manages and oversees contracted 9-1-1 and related service providers</li> <li>• Serves as the primary point-of-contact for system integrity issues and outages</li> <li>• Monitors operational reports to ensure reliability and resiliency of the 9-1-1 system</li> <li>• Delegate or leverage services within the existing GFR or other state departments, such as: contract/agreement development and execution</li> <li>• Maintain the Program website content management</li> </ul>

Role	Responsibilities
<p>Technical Systems Manager</p>	<ul style="list-style-type: none"> <li>• Manage all information technology (IT) aspects of the NG9-1-1 transition planning</li> <li>• Establish technical and cybersecurity standards for the Program, making recommendations to improve IT functionality, security, and efficiencies</li> <li>• Collaborate and coordinate the NG9-1-1 transition with state IT departments, vendors, contractors, consultants, and other applicable stakeholders</li> <li>• Conduct a needs assessment of PSAP and statewide infrastructure to develop an NG9-1-1 requirements document and transition plan</li> <li>• Serve as the technical advisor to the planning effort and be the in-house subject-matter expert on infrastructure, networks, applications and connectivity</li> <li>• Provide technical support to PSAPs that are procuring systems, recommending requirements to ensure system interconnectivity</li> </ul>
<p>GIS Manager</p>	<ul style="list-style-type: none"> <li>• Serve as the State's NG9-1-1 GIS Coordinator</li> <li>• Working with local GIS data providers, coordinate the creation of a standards-based, comprehensive, and authoritative GIS dataset to be used statewide for NG9-1-1 call routing</li> <li>• Establish GIS standards for the Program, based on national-level standards and best practices</li> <li>• Once established, ensure all geospatial datasets are appropriately and regularly synchronized, and all data providers are trained on the necessary interaction between 9-1-1 and GIS</li> </ul>
<p>Fiscal Specialist</p>	<ul style="list-style-type: none"> <li>• Track all 9-1-1 revenue and reporting, performing trend analysis, and preparing required materials for all quarterly and annual reporting of 9-1-1 revenue</li> <li>• Review PSAP 9-1-1 budget requests to ensure alignment with vendor rates and authorized uses of revenue, reconciling any differences or issues</li> <li>• Perform end-of-fiscal-year closeout activities, coordinating and completing annual fiscal audits</li> <li>• Monitors monthly expenses, accounts receivable, and other financial matters for the Program</li> <li>• Prepares the annual budget, including growth and collection forecasts</li> <li>• Assist in making fiscal recommendations to the legislature</li> </ul>

3.2.2.1 Recruiting Challenges

Expanding staff will require a phased implementation approach, focusing on those highest-priority positions to be filled first. Recognizing that the unemployment rate in the Phoenix area is running lower than Arizona generally and that nationwide unemployment rates are at a 10-year low, the skillsets that the Program is seeking are highly competitive in the local geographic area.

As a result, the Program will require flexibility and patience to overcome. For example, the Program may seek to attract project managers who understand IT project management methodologies, but do not have experience in 9-1-1, public safety, or emergency communications. This will require a more intensive onboarding experience to orient them to the community, but it may be an easier path forward than waiting for a candidate with 9-1-1 experience.

### 3.2.3 Expand Staff Duties

As the Program matures and adds additional staff support, the Program should consider expanding its offerings and taking on additional responsibilities that fall within its purview. MCP has included a table in Appendix A that identifies the Program's current responsibilities and additional responsibilities to consider across the following areas:

- Legislative
- Policy
- Funding
- Governance
- Technology
- Information and Content Management
- Operations
- Communication & Outreach

The additional responsibilities suggested are based on MCP's experience and familiarity with other 9-1-1 authorities across the nation.

### 3.2.4 Future Staff Roles

As the responsibilities related to NG9-1-1 coordination evolve and expand, MCP recommends that the Program regularly reviews its current workforce and make adjustments as needs warrant, which may mean additional responsibilities added to existing staff or by adding new positions.

MCP recommends that the Program expand its current workforce in two phases. The first phase would focus on meeting immediate needs and filling existing vacancies, while the second would occur after the Program has conducted a strategic planning process, established governance, evaluated gaps in support, and settled into its new infrastructure. MCP recommends that before expanding staff, the Program evaluate opportunities to streamline responsibilities as well as leverage resources within the GFR to support functions that are not specific to 9-1-1 specialization, such as grant and fiscal support, as well as administrative needs.

As the Program continues its transformation, additional staff needs may become necessary around the following roles:

- **Cybersecurity Analyst** – Supporting the Technical Systems Manager, would collaborate with State IT and cybersecurity professionals to develop a risk management program and recommends policy and standards for the statewide NG9-1-1 system to protect and mitigate risk of service failure. Would establish appropriate and necessary credentialing, cybersecurity, and interconnection agreements. In addition, would determine proper safeguards and encryption requirements, establish requirements for back-up systems, cybersecurity testing and training, and all cyber security / cyber hygiene maintenance standards and policies.
- **9-1-1 Public Information Officer** (9-1-1 Outreach / Communications Specialist) – In collaboration with the ADOA's Director of Statewide Communications, would develop and coordinate media relations for the Program. Would act as a liaison between the Program and the media to produce print, written, audio, and multimedia materials about the Program to include 9-1-1 public education, stakeholder communications, and social media presence. During periods of crisis or outage, lead the real-time sharing of information to inform the public, the media, and 9-1-1 professionals.
- **Training Coordinator** – (if Program authority expands to include training) Would develop training standards, training programs, and curricula to meet statewide training requirements. Would develop, implement, and regularly review evaluation criteria to confirm compliance statewide 9-1-1 training needs and the effectiveness of current and proposed curricula.
- **Quality Assurance Analyst** – (if Program authority expands to include Quality Assurance) Would establish procedures and processes for evaluating and measuring quality assurance. Would make recommendations on Quality Assurance processes, policy and standards in accordance with national best practices and standards. Would also monitor the quality assurance performance of PSAPs as it relates to established standards and best practices.

## 4 Governance Assessment

In the early years of 9-1-1, states like Arizona built their 9-1-1 programs to operate based on their limited responsibilities at the time, e.g., oversee and fund the 9-1-1 technology that delivered the call from the telephone company providing the dial tone to the PSAP. Statutes, funding authority, and funds distribution were based on the responsibilities of that era.

As legacy wireline technology has aged and the introduction and advancement of wireless and Internet-based telephony has quickly matured, consumer expectations on how to communicate with 9-1-1 have fundamentally changed. Advanced consumer technologies have greatly exceeded the outdated and outmoded communication capabilities of 9-1-1.

While the promise of NG9-1-1 provides great opportunities to better serve all those who need help, a governance body is needed to determine how 9-1-1 technology, operations, policy and funding decisions are made. The State requires a governance structure that understands and responds to the new emergency communications ecosystem, which is depicted in the figure below.

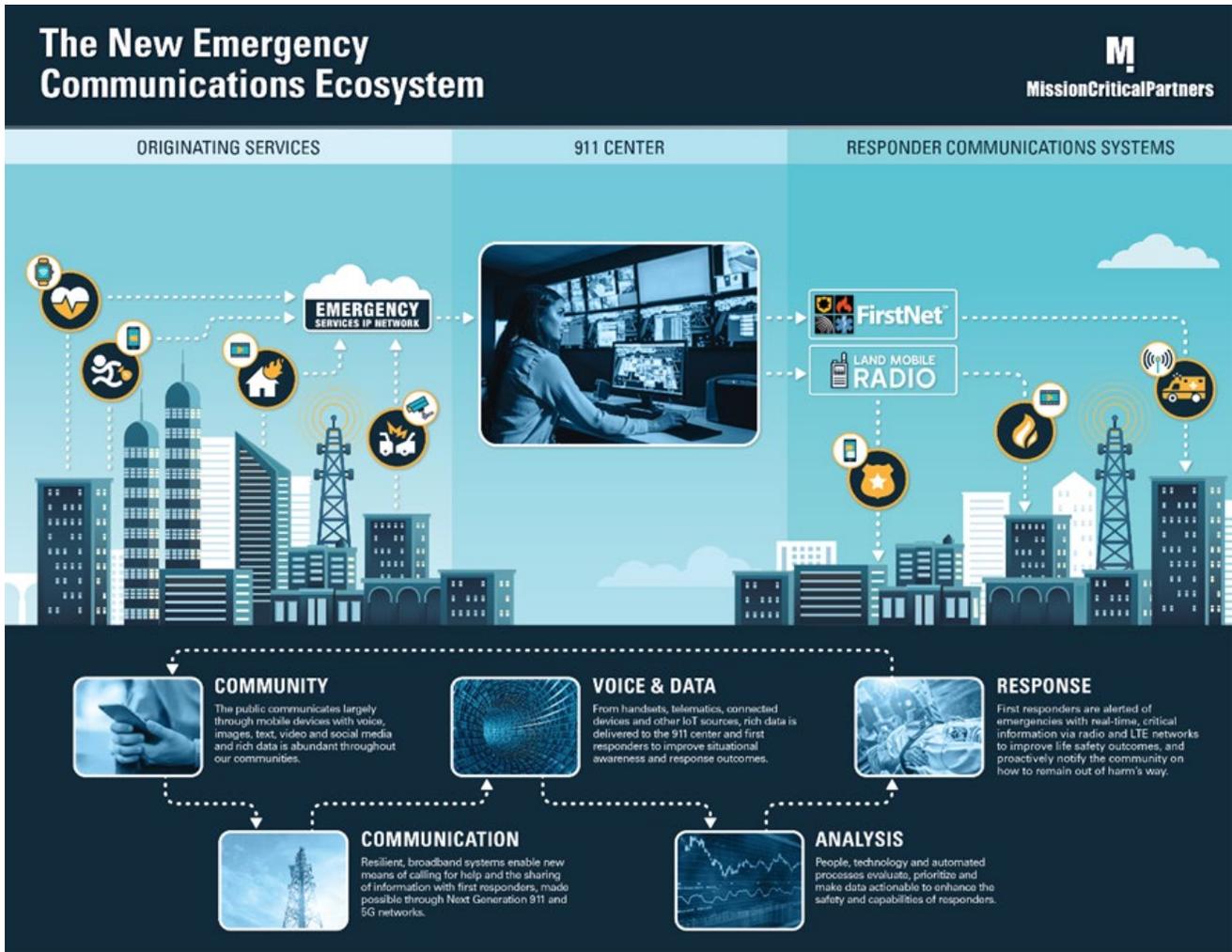


Figure 2: The New Emergency Communications Ecosystem

In today’s complex emergency communications environment, more planning and discussion between PSAPs, 9-1-1 system administrators, service providers, and first responders is required before new emergency communications technology is deployed. A robust governance structure fosters an opportunity for cross-jurisdiction and cross-function discussions to take place—discussions that are essential for interoperable, functional and operational success.

Historically, state 9-1-1 and state interoperable radio systems governance advisory boards or committees have existed independently, missing the chance for collaboration between related disciplines. Over the past decade, there are many instances of statewide governance structures inclusive of multiple public safety disciplines designed to advance and improve interoperable communications. This is demonstrated

by SAFECOM's<sup>16</sup> publication of recommended guidelines for statewide public safety communications governance structures.<sup>17</sup> These efforts, while initially focused only on radio communications, have evolved to include the nationwide public safety broadband network (NPSBN) being built by the First Responder Network Authority (FirstNet), NG9-1-1, and the Integrated Public Alert and Warning System (IPAWS).

Moving the Program under GFR better aligns 9-1-1 service with Arizona's Broadband program and FirstNet initiatives and is an initial step to coordinate emergency communications needs statewide. When Arizona establishes a functional emergency communications governance structure, it will enhance interoperable communications and improve the abilities of public safety agencies to respond to emergencies in a more coordinated and collaborative manner. Strengthening these capabilities will help improve public safety response significantly, through enhanced responder safety and better response outcomes.

#### 4.1 Current Structure

State-level authority for 9-1-1, by statute, resides with the Program, housed within the ADOA. The Program provides the funding mechanism for the deployment and ongoing costs of providing 9-1-1 services through oversight of the Fund. The Program uses its funding and rulemaking authority to assure the advancement of 9-1-1 services statewide.

While Arizona does not have a stakeholder-driven governance structure in place, in 2018 the ADOA GFR developed a business case to present to the Governor to establish a Statewide Interoperability Executive Council (SIEC).

#### 4.2 Recommendations

Based on MCP's expertise and review of the state 9-1-1 Program, and leveraging best practices that exist at the national-level, the following recommendations are provided for consideration:

Recommendations for Program Governance	
4.2.1	Establish an SIEC and 9-1-1 Subcommittee
4.2.2	Revise and Evolve the Arizona State 9-1-1 Plan
4.2.3	Develop a Communication Plan

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<sup>16</sup> <https://www.dhs.gov/safecom>; SAFECOM is managed by the U.S. Department of Homeland Security Office of Emergency Communications (OEC). Through collaboration with emergency responders and elected officials across all levels of government, SAFECOM works to improve emergency response providers' interjurisdictional and interdisciplinary emergency communications interoperability across local, regional, tribal, state, territorial, international borders, and with federal government entities.

<sup>17</sup>

[https://www.dhs.gov/sites/default/files/publications/SAFECOM%20Rec%20Guidelines%20for%20State%20Governance\\_FIN\\_AL\\_508C.PDF](https://www.dhs.gov/sites/default/files/publications/SAFECOM%20Rec%20Guidelines%20for%20State%20Governance_FIN_AL_508C.PDF)

#### 4.2.1 Establish an SIEC and 9-1-1 Subcommittee

Arizona is embarking on numerous public safety communications improvement initiatives that will demand substantial investment, collaboration, planning and oversight between stakeholder disciplines: a radio system upgrade, FirstNet's NPSBN deployment, and the transition from legacy 9-1-1 to NG9-1-1.

The true value of the Arizona SIEC will be its ability to coordinate all stakeholders around a shared vision, shared goals and shared support. The SIEC can engage the stakeholders using a "ground up" approach, considering the needs at the local, regional and tribal levels first. By focusing on what the local units of government need to be successful, members of the SIEC and its subcommittees can help translate those needs into state-level goals and objectives.

Prevailing sentiment from the 9-1-1 stakeholder interviews indicates a strong desire to participate in decision-making concerning the implementation of NG9-1-1 service. Stakeholders want to know more about NG9-1-1 and how it will affect their day-to-day operations, and they want to participate in the long-range planning. MCP recommends that the GFR continues to pursue the proposed SIEC structure and standing 9-1-1 subcommittee, as each will offer an opportunity for involvement.

As the PSAP community participates in the decision-making conversations, they are more likely to buy into upcoming changes because they better understand the Program's goals and potentially can help shape its future. The *National 9-1-1 Assessment Guidelines*<sup>18</sup> published by the National Program outlines benchmarks to aid states in achieving optimal 9-1-1 service and provides the following guidance about including stakeholders in 9-1-1 governance:

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"Coordination at the state level is essential. While a designated 9-1-1 coordinator and statewide coordination are paramount to the effective and efficient operation of 9-1-1, it is important to have input and involvement from the 9-1-1 community as a whole. This facilitates the process to broaden the authority of the 9-1-1 coordinator, as in a next generation environment, the authority to regulate is more important."

Strong 9-1-1 programs incorporate stakeholder contributions. Decision-making without broad-based stakeholder input can increase costs, decrease desirable outcomes, and delay necessary changes. MCP works with many states that have stakeholder-driven governance groups, committees, and councils that have proved to be invaluable for communicating about program initiatives, obtaining collaboration, setting policy, and addressing other governance issues critical to effective program management.

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<sup>18</sup> Report for National 9-1-1 Assessment Guidelines, 9-1-1 Resource Center, © June 2012.

As an example, the [Tennessee Emergency Communications Board \(TECB\)](#) consists of nine members, including county and city government representatives, a public citizen representative, and regional representatives from the 100 emergency communication districts (ECDs) in the state—which are similar to county PSAPs. The Board operates to facilitate the technical, financial and operational advancement of Tennessee’s 9-1-1 systems and is currently modernizing the State’s 9-1-1 infrastructure to NG9-1-1.

A more detailed list of eight other state 9-1-1 governance examples is included in Appendix B for reference.

#### 4.2.2 Revise and Evolve the Arizona State 9-1-1 Plan

The *Arizona State 9-1-1 Plan*, last updated in October 2017, identifies the key goals and objectives for improving Enhanced 9-1-1 (E9-1-1) service and functionality across Arizona. However, it reads more like an annual report than a strategy for enhancing and improving the state’s 9-1-1 systems and managing its progression toward NG9-1-1. While it is commendable that the Program updates the Plan annually, MCP recommends that the Program changes the plan so that it more specifically directs the implementation of NG9-1-1 in Arizona.

As part of the next revision, the Program should change the Plan’s title to the ***Arizona 9-1-1 Strategic Plan***. The document should evolve into a strategic, forward thinking, vendor-agnostic plan that encompasses the Program’s vision, mission and strategic initiatives that will advance 9-1-1 service throughout the state. Specific areas and initiatives should be developed by engaging stakeholders to understand the needs and wants of the PSAP community, with measurable success criteria in one-, three-, and five-year timeframes.

The Plan should look at 9-1-1 as one part of a holistic and integrated approach to developing an emergency communications ecosystem in the state, as demonstrated in Figure 2 above. Collaborating with other Arizona stakeholders directly involved in the emergency communications ecosystem—law enforcement, fire/rescue, and emergency medical services (EMS)—will help ensure alignment and establish a new way of managing 9-1-1.

While the *Arizona 9-1-1 Strategic Plan* sets the vision, an *NG9-1-1 Implementation Plan* would help establish the short-term and long-term actionable tasks necessary to achieve the vision. Both plans are needed; therefore, MCP recommends that the Program develops an implementation plan (or roadmap)—as part of, or in addition to, the *Arizona 9-1-1 Strategic Plan*—that describes how the Program will carry out the vision described in the strategic plan.

The proposed SIEC 9-1-1 Subcommittee will play a significant role in contributing to and validating the content of the strategic plan. As the Program designs the strategic plan, the SIEC 9-1-1 Subcommittee can help the Program keep the big picture in mind and more effectively balance competing stakeholder needs and priorities, helping everyone remain focused on the desired future state for 9-1-1 service. The SIEC involvement ensures that the strategic plan is developed from the ground up with sufficient stakeholder

influence and input. Finally, the SIEC 9-1-1 Subcommittee should vote to approve the plan once it is finalized.

One of the most important benefits the strategic plan offers is that it can set priorities for future funding decisions. The initiatives in the strategic plan can serve as the foundation for the State’s NG9-1-1 roadmap or implementation plan, and any funding requests can be evaluated to determine how well they support those initiatives and the priorities established in the plan. Ensuring that funding requests serve the advancement of the initiatives identified in the strategic plan essentially eliminates the risk of personal bias from decision-makers.

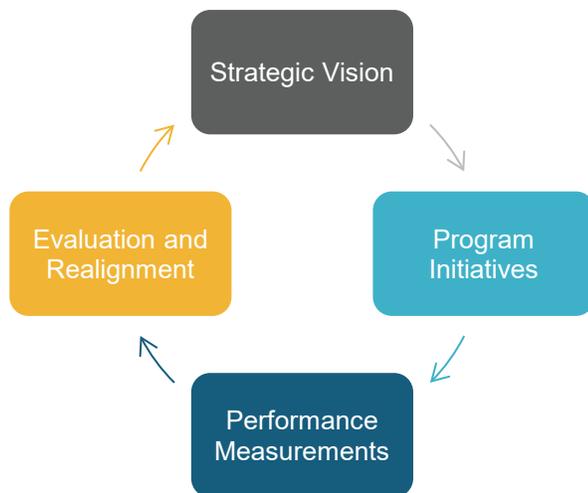


Figure 3: Strategic Planning Cycle

Performance measurements are needed in the strategic plan to track progress toward achieving the Program’s goals and vision. Effective performance measurements, when well-written and linked to a common vision, provide the checks and balances that help ensure that the Program is producing meaningful results that tie directly to strategic goals.

MCP also recommends that the Program reviews the strategic plan quarterly to determine what goals and initiatives have been accomplished, what are behind schedule, and to agree on action plans to get back on schedule. Performance updates should be shared with the SIEC 9-1-1 Subcommittee and at any local 9-1-1 governance meetings as appropriate and when possible.

This recommendation also aligns with the input collected from the stakeholder interviews. Many expressed a desire for a clear vision and strategic plan for the Program.

Arizona operates under the Arizona Management System (AMS). AMS is a professional, results-driven management system that focuses on customer value and vital mission outcomes for citizens. The system is based on principles of Lean, a proven people-centered approach that has delivered effective results in

both public and private sectors. Lean focuses on customer value, continuous improvement and engaged employees to improve productivity, quality and service.

MCP recommends that the Program use the AMS Lean principles to ensure that its strategic plan helps the State reach its desired future goals for 9-1-1 service. These principles, as applied to Arizona's 9-1-1 environment, are as follows:

1. Define the opportunity or value from the government's perspective as well as the end user of the services, in this case an effective 9-1-1 response.
2. Understand the minimum expected and acceptable performance that is desired and how that will be measured.
3. Identify and analyze the critical factors and root causes that impact the process performance.
4. Establish improvements to be implemented based on the analysis.
5. Continually reshape the process to achieve the desired outcomes and reach the ideal future state.

The SIEC 9-1-1 Subcommittee meetings would provide the Program with an excellent opportunity to report on performance and progress toward the goals identified in the strategic plan. Operationalizing and using the tracking mechanism allows stakeholders to remain aware of the program's status, especially accomplishments and roadblocks.

#### 4.2.3 Develop a Communication Plan

To help drive alignment around the strategic plan, the Program must develop a communication plan that documents the key messages, timing of those messages, the targeted audience, and the best method of communication (e.g., print, online, etc.). The communication plan will define how to best reach the community stakeholders directly and would help to create new communication relationships while strengthening the ones that are already in existence. This plan should identify a mechanism for collecting feedback so that the Program can receive information and answer questions from the local 9-1-1 authorities.

Communication with local 9-1-1 authorities is one of the most significant and important aspects of the Program's work. Website postings, newsletters, continuing regular meetings and interactions with PSAP directors and 9-1-1 system administrators is critical. Broadening communications to other stakeholders like state, county and city officials as well as public safety associations will be important as the Program implements changes. An effective communication plan is essential as changes to the overall program, the Program's structure, procedures, methods of operation, and funding criteria are updated for NG9-1-1. Ensuring that local authorities understand and adopt these changes will be essential for successful program outcomes and a satisfied constituency.

A comprehensive Communications Plan will assist the Program do the following:

- Create a communications rhythm with the Program and GFR organizations
- Create a communications rhythm with the PSAPs and 9-1-1 System Administrators across Arizona

- Engage influential members and stakeholders of the public safety communications community to ensure they are contributing to the projects and programs within the Program
- Improve two-way communication with the ADOA leadership, the Governor’s Office, the SIEC, the media, the general public, etc., especially in times of outages, emergencies or disasters
- Identify and use the most effective methodology for communicating messages to the different audiences
- Provide a public education plan that is executable and efficient

Many stakeholder interviews indicated a desire for more communication from the Program. Frequent and consistent communication with stakeholders offers transparency, keeps them engaged in the process and provides them with the necessary insight that will be useful to the Program as it effectively manages 9-1-1 services in Arizona.

## 5 Statutory and Regulatory Assessment

The transition to NG9-1-1 introduces not only a technological evolution, but an administrative and operational evolution as well. The opportunity for the Arizona legislature, the Program, and the State’s 9-1-1 stakeholders to embrace this evolution is here.

An assessment of the statutory and regulatory environment is needed to help close the requirements gap between those calling for 9-1-1 services and those providing effective 9-1-1 service. The state and its decision-makers must view 9-1-1 as part of a continuum of service delivery from the inception of the 9-1-1 call to the arrival of first responders; further, they must ensure that state statutes and regulation support that view and the public’s expectation of a high-quality level of service being provided.

### 5.1 Current State of Statute and Administrative Code

The current Arizona 9-1-1 funding statute, *Arizona Revised Statutes §41-704, Emergency telecommunication services; administration; revolving fund*<sup>19</sup>, revised in 2005, describes how Arizona’s 9-1-1 fund is managed and how funds are distributed. It describes processes and references that are no longer valid and may not be in alignment with the Program’s practices or the State’s administrative rules.

Arizona Administrative Code (Code),<sup>20</sup> Article 4, consisting of Sections R2-1-401 through R2-1-409, first adopted effective June 22, 1985, was last updated in 2000 and is limiting and outdated. The rules were last reviewed in 2015; however, no updates were identified at that time. These rules and regulations reference technologies and processes that are outdated and leave the Program challenged to meet contemporary

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<sup>19</sup> <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/00704.htm>

<sup>20</sup> Title 2, Administration, Chapter 1, Department of Administration (Authority: A.R.S. '38-613 et. Seq.) Article 4. Emergency Telecommunication Services Revolving Fund. Amended effective June 14, 1990. Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000.

demands. Rules and regulations that include specific references to technology and process often outlive the technological advancements and evolutions, stifling progress. Such limitations are not unique to Arizona and many other state 9-1-1 programs have worked to renew and revise their enabling 9-1-1 legislation, improving their statutes and eliminating technology-specific language.

## 5.2 Statute Recommendations

Based on MCP's expertise and review of the state 9-1-1 Program, and leveraging best practices that exist at the national-level, the following recommendations are provided for consideration:

Recommendations for Statute Changes	
5.2.1	Align Statute and Code
5.2.2	Align the 9-1-1 Program with National Guidelines
5.3.1	Remove Legacy Terminology in Statute and Code
5.3.2	Require an Annual Audit in the Statute
5.3.3	Ensure Liability Protection for the Program
5.3.4	Ensure Liability Protection for NG9-1-1 Technology Providers
5.3.5	Evolve or Dissolve the Role of System Administrators
5.3.6	Assess Multi-Line Telephone Systems (MLTS) Legislation

### 5.2.1 Align Statute and Code

MCP recommends the first, most critical step to take is to determine alignment between the state 9-1-1 statute and the Code, which defines the Program's responsibilities and provides the authority the Program needs to move forward with NG9-1-1. Without alignment, the Program risks conducting business without a strategy to ensure that it is fulfilling its responsibilities and could perform activities that are in conflict with its statutory obligations. As a start, the statute should be updated so that references to legacy terms and technologies are eliminated, the Program's responsibility for statewide coordination and oversight is explicitly stated, and all references are vendor-and technology-neutral. The statute and Code also should be updated to align with other state statutes, rules and other state requirements identified in the State Procurement Code and the State of Arizona Accounting Manual (SAAM).

### 5.2.2 Align the 9-1-1 Program with National Guidelines

MCP reviewed the Program against the benchmark criteria for state 9-1-1 authorities found in the *Report for National 9-1-1 Assessment Guidelines*. MCP assessed the statute's status and compared the Program with the report's best practices and areas of excellence. After assessing the Program's current program and policy environment, a gap analysis reveals some elements that should be considered for further development. The full gap analysis can be found in Appendix C and represents the steps that MCP believes the Program should take to align with national benchmarks.

MCP recommends that the Program works to expand statute language to clarify its authority to oversee statewide coordination of 9-1-1 services throughout the state.

NG9-1-1 requires significant coordination and oversight at the state level, well beyond the Program's current focus on providing localities with funding assistance to procure NG9-1-1 or other technology. While funding remains extremely important, the complexity of NG9-1-1 technology and the need for seamless service integration between PSAPs and that technology will challenge the Program's current role. For NG9-1-1 to succeed, the state governing authority must be empowered to issue statewide technology and operational standards while preserving the autonomy of local 9-1-1 authorities to make their own decisions on how to meet those standards.

Given the move to GFR, the changes underway, and the delivery of this assessment, the Program has some leverage right now to help ensure that its structure remains functional and resilient for the next phase of 9-1-1 service in Arizona. This move provides an opportunity to highlight the importance of the PSAPs and the role they play in the public safety communications ecosystem. Breaking down the barriers between the 9-1-1/PSAP community and the rest of the emergency response community will drive the operational effectiveness that will be crucial as more data streams become available to first responders via NG9-1-1.

There are five statutes that pertain to the Arizona 9-1-1 Program and how 9-1-1 service is to be addressed, defined, funded and administered in the state. In its assessment, MCP consulted the National 9-1-1 Program's *Guidelines for State NG911 Legislative Language*<sup>21</sup>, a compendium of best practices regarding model statute language, as well as its *State Assessment Handbook* and report template. MCP also applied its knowledge and experience with other state programs across the country. The assessment of Arizona statute § 41-704 is included here. Other statute assessments can be found in Appendix D.

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<sup>21</sup> [https://www.911.gov/pdf/Guidelines\\_for\\_State\\_NG911\\_Legislative\\_Language.pdf](https://www.911.gov/pdf/Guidelines_for_State_NG911_Legislative_Language.pdf) ; version 2.0, 2018.

Table 1: Statute Assessment – § 41-704 Emergency telecommunication services; administration; revolving fund

Topic	Statute Section Reference	Current Assessment
Fund Distribution	<p>A – The director of the Department of Administration shall:</p> <p>A1 – Adopt rules and procedures for administering and disbursing monies deposited in the emergency telecommunication services revolving fund, and at least quarterly review and approve requests by political subdivisions of this state for payment for operating emergency telecommunication service systems.</p>	<p>The Program has developed and maintains the <i>Arizona 9-1-1 Budget Standards &amp; Procedures</i><sup>22</sup> document that describes the procedures and standards associated with the 9-1-1 community's process for developing and submitting a budget, which assists the Program in administering the fund. Some internal policy documents (e.g., 9-1-1 Invoice Payment Process, 9-1-1 Program Admin Costs Payables Process, etc.) were identified as part of the Program's Business Continuity Plan. However, no comprehensive policy document on Fund Distribution was identified.</p>
<p><b>Action Needed (A1)</b></p> <p>Determine if any legacy rule or procedure on Fund Distribution exists and document any informal process that has been previously followed. If rules or procedures are identified, review and revise the documentation and develop a regular review cycle. In the absence of existing rules, identify and propose specific rules, policies, and procedures on the Fund Distribution that follow GFR guidelines and best practices. Once reviewed and approved by the Program, distribute and train 9-1-1 stakeholders accordingly. This action must be coordinated as part of the overarching Policy Manual recommendation detailed in the Policy section (section 6.2) of this document.</p>		
Funding Categories	<p>A2 – In fiscal year 2001-2002 and every two years thereafter, recommend to the legislature the amount of the telecommunication services excise tax that will be required during the following two fiscal years for purposes of this section, with supporting documentation and information. The legislature shall review the recommendation and take legislative action regarding the recommendation.</p>	<p>Although the Program may have undertaken this task in past years, there is no evidence that there is a planned or coordinated effort undertaken to review the telecommunications services excise tax or action taken with the legislature.</p>

<sup>22</sup> <https://aset.az.gov/sites/default/files/media/Budget%20Standards%20and%20Procedures%20v12%202016-8-2016.pdf>

Topic	Statute Section Reference	Current Assessment
<p><b>Action Needed (A2)</b></p> <p>The funding mechanism should be technology-neutral, allow for NG9-1-1 capital and operational expenditures, and provide for future service enhancement needs. Surcharge money dedicated to 9-1-1 should only be used for 9-1-1 communications purposes. The 9-1-1 Program should conduct a review to examine dedicated revenue in relation to the uses established by the state. The statute should protect collected revenue and have a mechanism that would allow the state to adjust the revenue stream as conditions change.</p> <p>Going forward, for each fiscal year, the Program or the SIEC/representative stakeholder group should gather data pertaining to the sufficiency of the current revenue generation, evaluate necessary changes and develop recommendations to the legislature on the tax need for support of the goals of the agency. As part of the evaluation process, changes in technology, operations, and policy should be considered, along with external changes that may affect the existing revenue generation. If no change is needed, that should be communicated to the legislature as well to document a positive action has been conducted by the responsible entity in accordance with the statute.</p>		
<p>Fund Protection</p>	<p>B – An emergency telecommunication services revolving fund is established to be administered by the director. The fund shall be used for:</p> <p>B1 – Necessary or appropriate equipment or service for implementing and operating emergency telecommunication services through political subdivisions of this state. Priority shall be given to establishing emergency telecommunication services in those areas of the state that are without emergency telecommunication services.</p>	<p>Establishes general guidelines for the eligible use of the fund, allowing the Program to make rules and policy on specific expenditure types and any potential limits. Two documents (the <i>Arizona 9-1-1 Budget Standards &amp; Procedures</i> and <i>Arizona State 9-1-1 Plan</i>) currently discuss eligible and ineligible costs.</p> <p>Existing legislation could do more to protect the fund from being used for purposes other than 9-1-1, which, if funds were to be diverted, would make the State ineligible to participate in a federal grant program. If such a diversion took place during a grant period, Arizona would be required to immediately return all grant funding.</p>
<p><b>Action Needed (B1)</b></p> <p>As the Program develops its Policy Manual (as detailed in the Policy section [section 6.2] of this document), there must be alignment on the policy of eligible and ineligible reimbursement costs. To further protect the fund from diversion, the Program should consider the suggestions provided in Appendix D. More-thorough discussion and recommendations regarding the fund itself can be found in the Funding section of this report.</p>		

Topic	Statute Section Reference	Current Assessment
Funding Allocation	B2 – Necessary or appropriate administrative costs or fees for consultants' services, not to exceed 5 percent of the amounts deposited annually in the revolving fund. The department may use up to two-thirds of the five percent of the amounts deposited annually in the revolving fund for administrative costs. The remainder of the 5 percent may be allocated for local network management of contracts with public safety answering points for emergency telecommunication services.	<p>More and more services in the NG9-1-1 environment are provided by third-party providers rather than the previous scenario where a 9-1-1 service provider handled much of the service.</p> <p>As staff is added to the 9-1-1 Program , the 2/3 of 5 percent formula may not be adequate.</p> <p>Also, in the new model, the “remainder of the five percent” also may be too limiting. If this is meant to support the 9-1-1 system administrators and their role changes in the future, this amount may or may not be adequate or needed.</p>
<p><b>Action Needed (B2)</b></p> <p>The Program must assess whether the current available funds are too limiting or acceptable for its operations, for administrative costs, and/or for consulting services. Limits could be changed or eliminated.</p>		
Fund Allocation	B3 – Monthly recurring costs of emergency telecommunication services, including expenditures for capital, maintenance and operation purposes.	Language sufficiently addresses need
<p><b>Action Needed (B3)</b></p> <p>No change required.</p>		
Fund Allocation	B4 – A wireless carrier's costs associated with the provision, development, design, construction and maintenance of the wireless emergency telecommunication	Cost reimbursement for wireless carrier costs (i.e., “Cost Recovery”) is currently allowed by statute, the FCC ruled (the “King County Ruling” <sup>23</sup> ) that cost recovery is not

<sup>23</sup> On May 25, 2000, the E9-1-1 Program Manager for King County, Washington, sent a letter to Mr. Thomas J. Sugrue, then chief of the Wireless Telecommunications Bureau of the Federal Communications Commission, requesting clarification on

Topic	Statute Section Reference	Current Assessment
	services in an amount that the wireless carrier has not recovered through the deduction mechanism specified in federal law.	required. Paying cost recovery has hampered Phase II deployment across the state, resulting in some areas that do not receive Wireless Phase II location information. Cost recovery should cease, and those monies should be repurposed to improve 9-1-1 service at the state and local levels.
<p><b>Action Needed (B4)</b></p> <p>Eliminate the wireless carrier cost reimbursement as an eligible cost. MCP recommends that Arizona immediately notify all wireless carriers of its intent to discontinue cost recovery at a future date.</p>		
Fund Protection	C – At the end of each fiscal year, any unexpended monies in the fund, including interest, shall be carried over and do not revert to the general fund but shall be applied to the extent possible to reduce the levy under section 42-5252, subsection A for the following fiscal year.	With the current tax rate, there should not be any unexpended monies in the fund at the end of each fiscal year. The Program should regularly review the fund balance to distribute monies and avoid a significant carry over. When carry overs do occur, they would be used to reduce the levy in the following fiscal year.
<p><b>Action Needed (C)</b></p> <p>MCP suggests that the levy reduction is not useful when the fund already is limited and funds are needed to assist local 9-1-1 jurisdictions and to prepare for NG9-1-1. The section, “be applied to the extent possible to reduce the levy under section 42-5252, subsection A for the following fiscal year” should be removed and the 9-1-1 Program should be allowed to use the carryover funds to build NG9-1-1 infrastructure or to assist local 9-1-1 public safety agencies. The Program should distribute all available resources to 9-1-1 systems and a fund balance should only be kept to ensure adequate cash flow and a reserve for unexpected or unplanned costs.</p>		

cost allocation and demarcation for wireless deployments. The intent of this request was to determine what costs were the responsibility of government and what costs were the responsibility of the wireless carrier. In its E911 Second Memorandum Opinion and Order, and in a May 7, 2001, response letter to the King County program manager, the Commission found that the carrier cost-recovery requirement had been a source of ambiguity and controversy and had impeded the implementation of Phase I. It further found that, because wireless carrier rates are unregulated, there was no need for a government-mandated carrier cost-recovery mechanism, noting that carriers are free to recover these costs in their charges to customers, either through their service rates or through specific surcharges on customer bills. Nevertheless, the Commission emphasized that states are free to have a carrier cost-recovery mechanism in place if they so choose.

In addition to the recommended changes to existing statutes, MCP also recommends new statutes for considerations:

Table 2: New Statute Considerations

1	<p>Grant the Program explicit authority to manage 9-1-1 service statewide. The statute should facilitate and allow statewide coordination and coordination with PSAPs, 9-1-1 authorities, regional stakeholder coalitions, private-sector service providers, and federal, tribal and military public safety systems.</p> <p>Identify the governance structure and stakeholders with whom the Program is expected to collaborate. Codify the review and guidance from a 9-1-1 governance/advisory committee to ensure that all critical stakeholders are informed of and involved with, as appropriate, Program activities. Consider permitting the governance committee mediation or dispute-resolution authority regarding local 9-1-1 planning and oversight disputes.</p> <p>Require the governance committee to assist in the development of an annual report to be filed with the Governor and the legislature regarding 9-1-1 performance and activities as stipulated in statute requirements.</p>
2	<p>To ensure the ongoing safety and security of the public, define the 9-1-1 service as an “<i>essential government service</i>” and 9-1-1 staff and support staff should be considered “<i>essential personnel</i>” consistent with the state constitution and other relevant statutes. Identifying staff and support staff as “essential personnel” provides for flexibility of movement for that personnel during disaster declarations.</p>
3	<p>The 9-1-1 Program should have authority to review and make recommendations to the legislature concerning proposed legislation affecting 9-1-1 service. The Code must be reviewed by a formal process and submitted to the Governor’s Regulatory Review Council (GRRC) every five years. If rule changes are identified, the Program should start a rule-promulgation process to change the rule(s).</p> <p>§ 41-704 requires that the ADOA recommends to the legislature every two years the amount of excise tax needed to conduct the 9-1-1 Program activities.</p> <p>The current language refers only to recommendations related to the amount of tax. Language also should direct the 9-1-1 Program to review and make recommendations on items related to 9-1-1 that are beyond funding, such as network design, standards, and training requirements.</p>
4	<p>The Program should have the explicit authority to coordinate 9-1-1 efforts with neighboring states, counties, and/or the federal government. This authority should permit the Program to enter into federal, interlocal, and interstate contracts and agreements. Because Arizona and Mexico share an international border and PSAPs transfer calls across the border, the Program should be authorized to enter into agreements to coordinate international 9-1-1 activities.</p>

5	The legislation should provide the Program with explicit authority to procure services and contract with public and private entities to support coordinated state NG9-1-1 plan implementation in accordance with existing Arizona procurement processes.
6	State legislation should identify the 9-1-1 Program as the entity responsible for 9-1-1 service provider certification and continue its rulemaking authority.
7	As part of its statutory responsibility, the Program should be required to coordinate its activities with local 9-1-1 and public safety entities. Within that context, the Program should have the responsibility and authority to provide technical assistance to such organizations for effective statewide 9-1-1 operations and coordinated planning.
8	MCP recommends that consideration be given to adding statute or rule language that allows Arizona to collect and aggregate data related to PSAP operations, such as the number of 9-1-1 calls by type; call-answer-time averages; dropped and misrouted calls; GIS data accuracy; call-routing plans and continuity of operations plans; system downtime; network uptime; and blockages. Local 9-1-1 authorities should be required to provide such data as part of their system service plan modifications and funding requests.

### 5.3 Other Important Statute Considerations

#### 5.3.1 Remove Legacy Terminology in Statute and Code

The current statute includes references to legacy terms that will need to be updated. Until the entire state transitions to NG9-1-1, it is conceivable that the legacy systems will remain in place in some areas. However, to accommodate NG9-1-1, terms and references included in the statute should be technology-agnostic to the greatest extent possible.

#### 5.3.2 Require an Annual Audit in the Statute

The 9-1-1 Program should conduct a yearly audit with all service providers to ensure that the 9-1-1 fund is receiving all revenue to which it is entitled; service providers must be required to certify their subscribers as they are today. This requirement is currently in Arizona statute and should remain, but the Program should update the language with more-generic and technology-neutral terminology.

#### 5.3.3 Ensure Liability Protection for the Program

MCP was asked to analyze whether the 9-1-1 Program was protected adequately by the existing statute regarding decisions it might make if a widespread service outage or disruption occurs.

After discussion with the Arizona Risk Management Office, MCP examined § 12-713<sup>24</sup>, specifically as it relates to liability. The statute states: “A public entity or any employee of the public entity is not liable for damages in any civil action for injuries, death or loss to a person or property that are incurred by any person with respect to all decisions made and actions or omissions taken that are based on good faith implementation except in the cases of wanton or willful misconduct.” MCP also reviewed the definition of a public entity in Arizona (§ 41-1492) for additional clarification. According to the statute, a “public entity” means any: (a) State or local government; and (b) department, agency, special purpose district or other instrumentality of a state or local government, including the legislature.

Based on the analysis of existing statutes, MCP believes the Program would be covered if the decisions were made in good faith and if the Program believed its decisions were in the best interest(s) of the state. The key phrase is “good faith,” ergo, the Program must not act with wanton or willful misconduct. Overall, our review leads us to believe that the statutes give the benefit of the doubt to those who act in good faith, thus protecting the Program from liability. MCP would like to note that this opinion is based on experiences in other areas and is not provided as an official legal opinion. It is recommended that the Program request a formal opinion from the State Attorney General on this issue.

MCP believes that the situation that most puts the Program at risk is its history of operating without written policies, often resulting in inconsistent decision-making as situations present themselves (such as a special funding request). This undocumented and seemingly arbitrary approach has left the Program open to criticism from local authorities who do not understand the rationale used to make decisions. To protect the Program’s integrity, the first step is to ensure that every Program practice or process is documented. Also, every Program authority or responsibility that is documented in statute or administrative code must have a written policy that documents how that responsibility will be addressed and followed.

#### 5.3.4 Ensure Liability Protection for NG9-1-1 Technology Providers

The statutory environment provides liability protection for wireless, wireline and prepaid providers. However, it may not cover NG9-1-1 providers unless they are defined as wireline or wireless providers in the state.

Liability protection is important to any service provider and it is important that Arizona offers new technology providers the same protections afforded to legacy systems and providers. Without such protections, Arizona may limit the number of providers willing and/or able to provide NG9-1-1 services. MCP recommends that the state request a formal opinion from the State Attorney General to confirm that §12-713 extends liability protection to NG9-1-1 service providers in the same manner that it is provided to legacy technology providers. If §12-713 does not provide protection, a revision to the statute is urged.

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<sup>24</sup> A.R.S. §Title 12 Courts and Civil Proceedings Section 12-713 – Providers of emergency services; civil liability. <https://codes.findlaw.com/az/title-12-courts-and-civil-proceedings/az-rev-st-sect-12-713.html>

### 5.3.5 Evolve or Dissolve the Role of System Administrators

The Program has established “PSAP liaison” positions, known as system administrators, to carry out its routine functions and to communicate regionally with PSAP managers. Today, there is one system administrator for approximately every county, with a few exceptions. The Program communicates with the system administrators who then communicate to the PSAPs and 9-1-1 constituents in their jurisdictions. This approach to streamlining communication and reducing administrative functions has enabled the Program to operate without significant overhead. However, it also has buffered the Program from direct contact with PSAP management, impacting its ability to have effective relationships with some PSAPs.

The 9-1-1 system administrator performs the administrative work required of the 9-1-1 planning committee. This role and responsibility are referenced in various documents (e.g., the *Arizona State 9-1-1 Plan*) but MCP has not found any specific documented role for this position in statute or the Code. It appears that the system administrator function has been established without any authority to do so. While this is not an immediate action, and additional decisions are required regarding governance structure, MCP recommends that the Program establishes the recommended formal governance structure, increase staff support at the program level, and discontinue the use of system administrators.

The system administrator is an integral part of the Program’s current operational model; therefore, any change would require coordination, planning and communication with local PSAPs to ensure engagement and an understanding of expectations during a period of transition. Additional Program staffing may also be required to manage the added workload. If increasing staff support at the Program level is not realistic within the current environment, then MCP recommends retaining the system administrator role, but aligning the administrators by county, thereby reducing the number of administrators to 15. MCP also recommends eliminating systems which consist of only one PSAP.

### 5.3.6 Assess Multi-Line Telephone Systems (MLTS) Legislation

Multi-line telephone systems (MLTS), i.e., private branch exchange (PBX) systems, are installed throughout the state in schools, businesses, hotels and residential facilities. When calling 9-1-1, a phone using an MLTS may not work the same way as a traditional landline or cellular phone, i.e., it may require an extra digit, often a “9,” to be dialed first to connect to an outside line. This can cause confusion, especially for children, who are taught to dial 9-1-1 and not “9, 9-1-1.” Further, it can be challenging in an office environment for first responders to pinpoint one’s exact location due to a single MLTS covering different buildings, floors, or sections per floor. None of this information is relayed to the PSAP or emergency responders; they only see the address that is connected to the primary telephone number, which is often different from the exact location of the call.

Recently, federal legislation known as Kari’s Law (47 USC 623<sup>25</sup>) was enacted which requires MLTS manufacturers and installers to ensure MLTS systems can dial 9-1-1 without the trunk access code. Further, the legislation requires on-site notification to assist first responders in identifying where the

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<sup>25</sup> <https://www.law.cornell.edu/uscode/text/47/623>

emergency call originated. In addition, the Ray Baum Act (Public Law 115-141) requires FCC rulemaking on “dispatchable location” from MLTS.

Arizona does not currently have E9-1-1 legislation in place for MLTS operators. States have different requirements in their statutes, and to date 17 states<sup>26</sup> have passed legislation or regulations requiring enterprises to provide E9-1-1 service for their employees. Typically, these regulations require a business enterprise to create defined regions so that emergency responders know from where a call is coming (i.e., building, floor, room).

An assessment is needed to determine whether additional changes or improvements are warranted for Arizona beyond what is required in federal legislation. MCP recommends that the 9-1-1 Program engages stakeholders to discuss the need for changes to the statute. At the very least, the Program should engage and educate the business community about the issues and the federal law.

## 5.4 Arizona Administrative Code Recommendations

In concert with changes to statute, the 9-1-1 Program also will need to make changes to the Arizona Administrative Code if it is to effectively position the program and local PSAPs for future success.

Recommendations for Administrative Code Changes	
5.4.1	Update the Code
5.4.2	Require a 9-1-1 Strategic Plan
5.4.3	Revise and Require System Service Plan
5.4.4	Codify Funding Eligibility and Process
5.4.5	Require Interagency Agreements

### 5.4.1 Update the Code

The Code was last revised 18 years ago<sup>27</sup> and requires updating to accommodate existing technology, align with statute, prepare for the transition to new state administrative roles, and to revise terminology and program functions.

The following is an assessment of the current Code and recommended updates for the Program to consider:

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<sup>26</sup> Alaska, Arkansas, Colorado, Connecticut, Florida, Illinois, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Hampshire, Oregon, Texas, Virginia

<sup>27</sup> Article 4 consisting of Sections R2-1-401 through R2-1-409 adopted effective June 22, 1985. Amended effective June 14, 1990. Amended by final rulemaking, 6 A.A.R. 1971, effective May 12, 2000.

Table 3: Administrative Code Assessment

Code Section Reference	Current Assessment
R2-1-401 Definitions	Includes references to legacy terms; does not include NG9-1-1 terms such as Emergency Services IP Network (ESInet), Next Generation Core Services (NGCS), managed services, GIS, system administrator, etc.
<p><b>Action Needed</b></p> <p>The current Code includes references to legacy terms that will need to be updated as well as in statute. As discussed in the Statute section, terms should be updated to accommodate current and emerging technology with eventual elimination of legacy terminology. The terms in the statute and Code will need to be consistent. NG9-1-1 terms and references included in the Code also should be technology-agnostic, non-proprietary and promote open architecture. The Code should require for all NG9-1-1 solutions to be conformant with NENA's i3 standard and require interoperability with other NG9-1-1 systems. Updates should include new terms that are missing, such as those related to emerging technologies.</p>	
R2-1-402 – Establishment of 9-1-1 Planning Committee	Current language requires representation of all response services.
<p><b>Action Needed</b></p> <p>If a secondary PSAP exists in the county, that should be referenced and described in the service plan. Other representatives on a local planning committee may include representatives of the deaf, hard-of-hearing community, GIS representatives, and local financial and legal support.</p> <p>In addition, contact information for PSAP management and 24 x 7 operational staff supervisory personnel should be documented in the service plan.</p>	
R2-1-403 – Submission of Service Plan	Requirement related to service area is outdated; contains legacy terminology; network design requirements need to address NG9-1-1; references to telephone company and telephone exchange are outdated and need to include NG9-1-1 providers; there is no mention of open and competitive procurement process requirements or the need to follow state procurement guidelines.
<p><b>Action Needed</b></p> <p>In the NG9-1-1 environment, telephone company references will not be a legitimate jurisdictional description; rule needs updating to reference procurement processes to be followed.</p>	
R2-1-404 – Certificate of Service Plan Approval	Section includes reference to job title no longer used; refers to service initiation; content requirements of the plan refer to service initiation, etc.

Code Section Reference	Current Assessment
<p><b>Action Needed</b></p> <p>References need to be updated for changes to position (e.g., 9-1-1 program administrator) and services. There should be two sections in the Code, one that describes requirements of a service plan for new service (for those areas not currently covered by 9-1-1 service) and one for those entities that are updating their service plan for changes, new technology, or network modifications.</p>	
<p>R2-1-405 – Resubmitting of a Service Plan</p>	<p>Title reference is outdated.</p>
<p><b>Action Needed</b></p> <p>Update authority title. There is no mention of the criteria used to reject a service plan. This should be explicit or a reference to the policy outlining what would cause a service plan to be rejected should be indicated.</p>	
<p>R2-1-406 – Modification of an Approved Service Plan</p>	<p>Title reference is outdated.</p>
<p><b>Action Needed</b></p> <p>Update authority title. Criteria for when a service plan should be modified should be included.</p>	
<p>R2-1-407 – 9-1-1 System Design Standards</p>	<p>References are outdated and refer to legacy systems. Nothing included for NG9-1-1.</p>
<p><b>Action Needed</b></p> <p>Updates for NG9-1-1-related technologies and requirements are necessary. Technical service standards should be developed and included in the service plan requirements. These include such elements as ESInet standards, references to NENA i3 standards, other communications systems the PSAP is connected to—including backup agreements—cybersecurity processes, policies, etc.</p>	
<p>R2-1-408 – 9-1-1 Operational Requirements</p>	<p>References are outdated and refer to legacy systems. References “secondary PSAP” but there is no definition for this term. Nothing included for NG9-1-1 operational elements. In addition, reference to “print sites” is outdated.</p>
<p><b>Action Needed</b></p> <p>Updates for NG9-1-1-related operational requirements are necessary, as follows:</p> <ul style="list-style-type: none"> <li>• Determine if the minimum monthly call volume of 300 calls (approximately 10 per day) is too low to meet the qualifications of a primary or secondary PSAP and revise as needed.</li> </ul>	

Code Section Reference	Current Assessment
	<ul style="list-style-type: none"> <li>– Funding PSAPs with a minimum of 300 calls per month is not cost effective. Consideration should be given to raise that number or determine a different minimum criteria.</li> <li>– The State of California requires the PSAP answer at least 1,201 calls per month<sup>28</sup>.</li> <li>– Some states require a minimum number of population served. As part of the State of Illinois’ PSAP consolidation requirements<sup>29</sup>, PSAPs must serve a population of at least 25,000.</li> <li>– Some states do not allow more than one PSAP to operate in a single county jurisdiction</li> <li>• Remove reference to print sites.</li> <li>• Operational standards should be developed and included in the service plan requirements. These include such things as interagency agreements, call-routing rules, border control functional requirements, GIS, call logging and records retention, text to 9-1-1, etc.</li> <li>• Include mention of PSAP minimum staffing requirements or minimum training for telecommunicators answering 9-1-1 calls, transfer requirements, and language translation service capabilities.</li> <li>• Add detail regarding continuity of operations including backup operations and descriptions of continuity of operations planning (COOP), including failover electrical systems, processes followed in the event of outages, command and reporting structures, etc.</li> <li>• The requirements should reference NENA and National Fire Protection Association (NFPA) operational standards for answering 9-1-1 calls within a specified threshold. The 9-1-1 Program should consult NENA/APCO’s PSAP Service Capability Criteria Rating Scale standard and Next Generation 9-1-1 Public Safety Answering Point Requirements for a more complete list of items to consider.<sup>30</sup></li> <li>• The section references “secondary PSAP” but there is no definition of such. In the same section it refers to the requirement of receiving at least 300 “emergency 911 calls” per month to be eligible for funding. This is contradictory in that the traditional definition of a secondary PSAP is a center which does not directly receive emergency 9-1-1 calls. Currently, however, the Program has been funding secondary PSAPs, which MCP recommends the practice cease and any reference to secondary PSAP be removed from the Code. Note: this is not meant to discontinue funding for Secondary PSAPs that are designated as a back-up facility for a Primary PSAP (e.g., Arizona Department of Public Safety, Northern and Southern Divisions).</li> </ul>
R2-1-409 – Funding Eligibility	Contains outdated references to legacy terminology, such as “exchange” services, and the position/title of assistant director

<sup>28</sup> <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/004-ChapterIIIFunding.pdf>

<sup>29</sup> Established as part of the Illinois Emergency Telephone System Act (50 ILCS 750), enacted July 1, 2017. <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=741&ChapterID=11>

<sup>30</sup> NENA/APCO Next Generation 9-1-1 Public Safety Answering Point Requirements NENA/APCO-REQ-001.1.2-2018, October 6, 2015, Reviewed 04/05/2018 [https://www.nena.org/resource/resmgr/standards/NENA-APCO-REQ-001.1.2-2018\\_N.pdf](https://www.nena.org/resource/resmgr/standards/NENA-APCO-REQ-001.1.2-2018_N.pdf)

Code Section Reference	Current Assessment
<p><b>Action Needed</b></p> <p>Update the authority position/title; NG9-1-1 elements should be referenced if they are to be funded; funding policy related to special projects should be referenced.</p> <p>The Program should align the funding eligibility for consultants and administrative costs with those defined in statute. Currently, the statute states a limit of 5 percent with two-thirds allowable to the state Program and one-third allowable to system administrators, while the code states 3 percent.</p>	
<p>R2-1-410 – Method of Reimbursement</p>	<p>Contains outdated references to legacy terminology, such as “network exchange” services and the position/title of assistant director; NG9-1-1 references are not included.</p>
<p><b>Action Needed</b></p> <p>Update the authority position/title; NG9-1-1 elements should be referenced if they are to be funded; funding policy related to NG9-1-1 should be included.</p> <p>The Program should consider allowing consultative services to be allowable under a special project request (R2-1-409.2), instead of only with the original 9-1-1 service plan or the annual budget request.</p> <p>Remove the requirement for the Program to pay the vendors directly as this does not comply with state procurement and accounting policies and statutes.</p>	
<p>R2-1-411 – Allocation of Funds</p>	<p>Contains outdated references to legacy terminology, such as “network exchange” services and position/title of assistant director; NG9-1-1 references are not included.</p>
<p><b>Action Needed</b></p> <p>Update the authority title; add NG9-1-1 references; ensure funding allocation is followed or changed to reflect current allocation process.</p>	

5.4.2 Require a 9-1-1 Strategic Plan

MCP recommends that the Code be updated to require the 9-1-1 Program to develop a comprehensive strategic 9-1-1 plan. A comprehensive statewide strategic 9-1-1 plan is fundamental to the success of any state 9-1-1 program. Requiring the strategic plan in Code formalizes the process and elevates the importance of planning and funding requirements.

The state strategic 9-1-1 plan would address state, regional, and local roles in the control of all aspects of the statewide system or local systems. The Program would have explicit authority to coordinate and

oversee the development and implementation of a statewide plan for emergency 9-1-1 communications. In addition, MCP recommends the plan include quality of service requirements to specify uniform, minimum levels of 9-1-1 service to be consistently provided across all Arizona PSAPs. The strategic plan should include specific goals and objectives around NG9-1-1 as well as goals to bring PSAPs up to that standard.

The plan must explicitly move the state toward NG9-1-1 and describe network design standards and requirements to ensure that local and regional 9-1-1 networks can communicate with each other and share information seamlessly. In particular, the state should expressly adopt NENA's i3 standard as the standard for NG9-1-1. Standards and requirements would address minimum training requirements, text-to-9-1-1, PSAP minimum staffing and other aspects of 9-1-1 service delivery.

The plan would be required to be reviewed and updated annually.

#### 5.4.3 Revise and Require System Service Plan

MCP recommends that the 9-1-1 Program creates a comprehensive new template for system service plans and requires PSAPs to submit their updated plans annually. This should be included in the Code updates concerning NG9-1-1 services.

Original Code language describes the need for a system service plan when the 9-1-1 system is initiated or when significant changes are made to the local 9-1-1 jurisdiction's service. The current process and content outlined in the Code for the system service plan is outdated and lacks structure describing the annual update and submission process, and jurisdictions have not been held accountable for the yearly update. The system service plan template should be enhanced to ensure that local PSAPs are sharing pertinent information with the Program, and a process should be established by the Program to require updates to be submitted annually, and to track them.

#### 5.4.4 Codify Funding Eligibility and Process

Today, 9-1-1 funding is distributed without a documented focus on 9-1-1 priorities. To ensure transparency with stakeholders, and to help align 9-1-1 funding with the State's comprehensive emergency communications goals and its strategic plan, MCP recommends that the 9-1-1 Program:

- Develop a single, updated, and authoritative list of eligible funding items, incorporating NG9-1-1 technologies
- Establish priorities for those elements based on the state's strategic goals (e.g., incentivize colocation, consolidation, regionalization, shared-services, etc.)
- Document the funding distribution process to include the reporting requirements that all local 9-1-1 authorities must follow

The Code should be amended to state that only items on the eligible funding list will be considered for funding. The list of eligible items should be included in the Program's policy manual. The funding distribution process and reporting requirements also should be documented as part of the manual.

## 5.4.5 Require Interagency Agreements

Arizona has physical borders with four other states and an international border with Mexico. As a result of these geographical boundaries, calls are transferred daily between neighboring agencies. Interconnection between agencies, regions, states or even countries becomes an important consideration for jurisdictions that need the ability to transfer calls or alternate-route to jurisdictions that will not reside on the same network. Formalized agreements will be essential. The October 2016 publication of the U.S. Department of Transportation (DOT) National Highway Traffic Safety Administration's National 911 Program NG911 Interstate Playbook<sup>31</sup> helped create a roadmap for interconnecting statewide systems, or systems across state borders.

While improvements to call-routing accuracy that are anticipated with NG9-1-1 will reduce the need to transfer misrouted calls, it will not eliminate these calls. Therefore, it is imperative for the Program to amend the Code to require local jurisdictions to have an interagency agreement with neighboring jurisdictions. The Code update should require local 9-1-1 authorities to attach such agreements to the annual system service plan updates and, at a minimum, the agreements should address or include:

- Call handling (misroutes, transfers, misroute reporting requirements, and GIS edge-matching agreements)
- Backup agreements
- Shared contact information

While not a requirement, it may be helpful for the Program to develop an interagency agreement template for PSAPs to use. A good example can be found in Chapter 1 of the Interstate Playbook.<sup>32</sup> A common or suggested template ensures a comprehensive agreement that maintains consistency across all parties statewide. When formal agreements are not possible or will take a long time to put in place, the 9-1-1 Program should encourage neighboring agencies to collaborate and develop informal agreements to outline expectations and approaches regarding essential operational needs.

## 6 Policy Assessment

### 6.1 Current Policy Landscape

Written policies are an effective way for government agencies and offices to remain transparent, operate within legal boundaries, and minimize risk. Interviews with PSAPs and Program staff revealed that the Program has been interpreting statute and Code to guide its practices and activities without established policies.

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<sup>31</sup> [https://www.911.gov/project\\_nextgeneration911interstateplaybook.html](https://www.911.gov/project_nextgeneration911interstateplaybook.html)

<sup>32</sup> [https://www.911.gov/pdf/National\\_911\\_Program\\_NG911\\_Interstate\\_Playbook\\_Chapter\\_1.pdf](https://www.911.gov/pdf/National_911_Program_NG911_Interstate_Playbook_Chapter_1.pdf)

The lack of a comprehensive Policy Manual that guides Program operations and decision-making has created an environment where the stakeholder community lacks trust in the Program. Situations arise with inconsistent results and are complicated due to a lack of transparency into how decisions are being made. Without a Policy Manual existing as a foundation, the Program has only subjective criteria to defend any decision or action. **Immediate action must be taken to resolve this deficiency.**

## 6.2 Recommendations

The Program must document its policies to help instill stakeholder confidence in the Program's equal treatment of stakeholders, processes, and requests. In addition, the Program should strengthen its policies and procedures so that it provides structured guidance to local 9-1-1 authorities on topics such as the following:

- Funding
- Communications
- System service plans
- Special funding requests

Formally established policies will help the Program to act equitably and with consistency and help it achieve the objectives identified in the strategic plan. Additionally, documented policies and procedures will help the Program provide clear instructions about required actions and apply a consistent approach to decision-making that is defensible and clear.

### Recommendations for Program Policy Changes

- 6.2.1 Establish Policy-Making Methodology
- 6.2.2 Develop a Program Policy Manual
- 6.2.3 Clarify and Communicate 9-1-1 Fund Distribution Policy
- 6.2.4 Identify and Address New Policy Needs

#### 6.2.1 Establish Policy-Making Methodology

To help develop strong policies, the Program must first establish a policy development methodology that can serve as the roadmap for setting program policy. The methodology should include the following steps and considerations:

## Identify when a new policy is needed

### Describe how the policy gets developed

- What stakeholders should play a role?
- Who writes the policy?
- What best practices are being weighed?

### Describe the policy approval process

- Which stakeholders vet the policy?
- Who has final decision-making authority?

### Explain how the policy is operationalized in the Program activities

- Which stakeholders should be informed?
- Who is responsible for tracking progress and measuring performance against the policy?

In tandem with the methodology development, the Program also will need to establish its timeline for updating or developing policies. Once a timeline is established, it should be shared with local PSAPs to help them understand the direction that the Program is taking and to help them understand how their local NG9-1-1 implementations fit into the overall NG9-1-1 vision and plan.

## 6.2.2 Develop a Program Policy Manual

The 9-1-1 Program currently promulgates policy as needed and to its detriment, does not operate using a formalized, written and published set of policies. The Program must develop a written program policy manual. A manual helps move decisions from the subjective to objective, establishing a baseline of expectations that everyone can understand, and protects the Program from unlawful or misguided decision-making. Ultimately, a policy manual reduces risk to the Program and the State.

With the Program's current situation, it must first take immediate action to:

- Gather any past rule, policy, procedure that has existed in any form as source materials
- Leverage its membership in national organizations or its subject matter expert consultant to access other state 9-1-1 program policy manuals
- Identify and prioritize the policy areas to be addressed first, such as: fund distribution, special / emergency funding request, fund management, invoice approvals, office administration, etc.
- Agree on a policy development methodology (as described above) and initiate policy drafting
- Use GFR and other ADOA resources to assist in the policy development process
- Develop a review and approval process as part of the overall methodology
- Train and orient Program staff first, then develop a process to inform stakeholders of new policies that are emerging (as part of the overarching Stakeholder Communications Plan)

The best way to ensure that policies are in place to support the Program's activities is to conduct a crosswalk. For every Program responsibility identified in statute or Code, there should be a supporting policy or documented practice that identifies how the Program executes on its responsibility. The Arizona Management System (AMS) would be an excellent tool to review, update and document the Program activities and practices.

Rebuilding trust within the stakeholder community will be difficult, especially at first. The Program should seek guidance and assistance on developing and implementing the new Policy Manual and with stakeholder engagement / managing change.

Table 4: Code Responsibility and Policy Crosswalk Example

Responsibility of the Program as Outlined in Code:	Policy Direction
<p>The assistant director shall approve or disapprove a service plan within 60 days of its submission.</p>	<p>The Program should have a written policy describing the criteria that the assistant director will use to approve or disapprove the service plan. The policy should include a requirement for the assistant director to document the analysis based on the written criteria, and a method for tracking the submission and meeting the stated notification timeline identified in the Code.</p>

A more extensive table documenting the Program’s responsibilities and some potential corresponding policy recommendations can be found in Appendix E. This tool should help the Program clarify and document policies that support its responsibilities.

### 6.2.3 Clarify and Communicate 9-1-1 Fund Distribution Policy

As a priority, the Program must develop policies regarding fund-distribution criteria. This is one of the most sensitive and critical topics raised during interviews with PSAP managers and system administrators.

Throughout the stakeholder interviews, MCP was told that the criteria upon which funding decisions are based are not clear, especially as it relates to special funding requests, and local 9-1-1 authorities were unclear as to what requests would be acceptable. Stakeholders asked if there was a long-range strategy or vision that guides the Program, as this was not widely understood. They also wanted to know if there was a format for submitting service change requests to the Program. These perceptions and questions indicate a need for a more structured and documented approach to Program policies that will guide the new 9-1-1 Program Administrator and System Administrators in carrying out the requirements of the statute and the Code.

### 6.2.4 Identify and Address New Policy Needs

The 9-1-1 Program should formalize a process for reviewing policies on an annual basis. By engaging in an annual policy roundtable with the SIEC, the Program could review current policies, discuss any recommended changes, and identify any new policies for development. This will become important as NG9-1-1 is implemented across Arizona, or as statute changes and rule promulgation occurs. Current policies will require updates as NG9-1-1 implementation advances.

## 7 9-1-1 Funding

Given the current available funding and distribution model, many PSAPs throughout Arizona are unable to meet the public’s expectations for delivering the next generation of 9-1-1 services.

Migrating to NG9-1-1 and text-to-9-1-1 is critical for Arizona, but these advancements risk stagnation and delay unless the state can reformulate its model for funding the transition. Some states already have updated their funding models, which has enabled them to implement statewide, standards-based technology. Their experiences and lessons learned can help guide Arizona in generating its updated approach.

## 7.1 Current State

### 7.1.1 9-1-1 Fee

Per statute<sup>33</sup>, the 9-1-1 fee in Arizona is currently set at \$0.20 per subscriber for wireline, wireless and VoIP service, and a fee of 8/10ths of 1 percent of wireless prepaid transactions. This is the lowest 9-1-1 fee assessed by any state in the U.S. Statutory changes made in 2001 mandated a steady reduction in the excise tax rate, which significantly has decreased the revenue available for maintaining current 9-1-1 services, let alone the transition to NG9-1-1. The step down in the rate along with the fund sweeps is responsible for the deficient financial position of the fund today.

Table 5: 9-1-1 Fee (Excise Tax) Reductions

Year	9-1-1 Fee (per billing account)	Percent Decrease from 2001
2001	\$0.37	NA
2006	\$0.28	-24.3%
2007	\$0.20	-45.9%

Between 2001 and 2006 the yearly inflation rate increased while the state's average annual 9-1-1 fee decreased. Simply stated, the technical and operational costs for delivering 9-1-1 service are on the rise while generated 9-1-1 revenue decreases or remains relatively flat.

As shown in Table 6 below, between 2014 and 2017, the 9-1-1 fee provided anywhere from \$17.1 million to \$18.5 million dollars each year to fund PSAPs. This revenue, in addition to the interest collected, is used to currently fund 84 PSAPs; however, additional PSAPs operate in the state without receiving funding from the Program. This includes PSAPs based in county sheriff's offices; city fire and police departments; some state, tribal or federal agencies; and a few private ambulance services.

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<sup>33</sup> A.R.S. §Title 42, Chapter 5 Section 42-5252 Levy of Tax.

Table 6: 9-1-1 Program Revenue – 2014-2017<sup>34</sup>

	FY 2014	FY 2015	FY 2016	FY 2017	FY2018
Excise Tax (9-1-1 Fee)	\$17,109,402	\$17,850,677	\$17,695,126	\$18,530,303	\$18,062,315
Interest Income	\$40,924	\$42,111	\$39,552	\$85,081	\$112,918
Total Collections	\$17,150,326	\$17,892,788	\$17,734,678	\$18,615,384	\$18,175,233

The 9-1-1 Program historically did not allow PSAPs to submit funding requests over the amount received the previous year; therefore, the Program does not have the data required to evaluate the effectiveness of the 9-1-1 fee.

It is difficult for the Program to know with certainty that all 9-1-1 revenue is being accurately reported, collected, and provided for distribution by the carriers without an audit (as recommended in Section 5.3.2). Using publicly-available data from sources including the FCC<sup>35</sup> and CTIA – The Wireless Association, MCP estimates the number of wireline, wireless, and VoIP subscribers in Arizona at between 8.85 million and 10.96 million. Even with the lower estimate, there does appear to be a discrepancy between the 2017 revenue and what would have been expected at \$0.20 per month, per subscriber (for wireline, post-paid wireless, and VoIP services). This underscores the need for a thorough review of the application of the telecommunications services excise tax and conducting carrier audits to ensure that the correct amount is being remitted to the State.

### 7.1.2 Funding Eligibility Requirements

ARS § 41-704 specifies that 9-1-1 funds will be used for “implementing and operating telecommunications services through political subdivisions of the state.” Translated, this means that city and county PSAPs<sup>36</sup> are eligible to receive state 9-1-1 funds. However, the Code is in conflict with the statute and allows 9-1-1 funds to go to “public safety agencies”, including some federal, tribal, state and private PSAPs, in addition to county and city PSAPs.

<sup>34</sup> Arizona Statewide 9-1-1 Plan

<sup>35</sup> Federal Communications Commission (FCC), Voice Telephone Services Report: Voice Telephone Services as of 06/30/17. Released 11/18. State-Level Subscriptions ([https://www.fcc.gov/sites/default/files/vts\\_st1.xlsx](https://www.fcc.gov/sites/default/files/vts_st1.xlsx))

<sup>36</sup> R2-1-401 defines "Public safety answering point" or "PSAP" to mean a communications facility operated on a 24-hour basis that is assigned the responsibility to receive 9-1-1 calls and, as appropriate, notifies or dispatches public or private safety services or extends, transfers, or relays 9-1-1 calls to an appropriate public or private safety agency.

Under section *R2-1-401, Definitions of the Administrative Code*,<sup>37</sup> a public or private safety agency means “any unit of local, state or federal government, special purpose district or private person located in whole or part within this state, that meets the definition and provides or has the authority to provide firefighting, law enforcement, ambulance or other emergency medical services.” This definition makes it difficult to deny 9-1-1 funding to any party that provides, or has the authority to provide, emergency response services. As long as a public or private safety agency takes the following actions, the Code stipulates that they qualify for 9-1-1 funds:

1. Establish a 9-1-1 planning committee
2. Annually submit a budget of projected costs
3. Monitor that design standards are met by the telephone companies providing 9-1-1 service
4. Annually submit a budget of projected 9-1-1 costs with required information outlined in the Section R2-1-403 of the Code

The 9-1-1 Program reviews the service plan and budget and, if they are approved, sends a Certificate of 9-1-1 Service Plan Approval notification to the submitting agency. If the service plan and/or budget is not approved, the Program provides an explanation for the denial and allows the PSAP to submit a revised service plan to receive funding. Details surrounding the service plan are included in Section 5.4.3 of this report.

Today, Arizona funds federal PSAPs; however, federal entities have their own funding sources and may not require state 9-1-1 funding. This is an uncommon practice in other states, but partnerships with the Department of Defense (DoD) have produced positive results. There are several examples where a DoD facility maintains a primary PSAP and can act as a backup PSAP location. Military installations frequently have large on-base populations and rely on local public safety responders, necessitating data sharing with 9-1-1 and interoperable communications systems.

Arizona also funds tribal PSAPs, which are somewhat new entrants to state 9-1-1 systems. Tribal partnerships are highly encouraged by the Department of Homeland Security (DHS) Cybersecurity and Infrastructure Security Agency's (CISA) Emergency Communications Division (formerly known as the Office of Emergency Communications [OEC]) and the National 911 Program, but there is no federal requirement for states to fund tribal PSAPs. Arizona, like many other states, funds tribal PSAPs to ensure interoperability and a consistent level of public safety service.

In addition to federal and tribal PSAPs, Arizona also funds a private company that operates a PSAP, a situation that is highly unusual, if not unique. The Program should reevaluate the purpose and benefit of funding the operations of a private entity using public funds.

Also, based on call statistics provided by the Program, it appears that some PSAPs are being funded that fail to meet the minimum monthly call threshold as defined by Section R2-1-408 (“To qualify as a primary

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<sup>37</sup> Article 4 consisting of Sections R2-1-401 through R2-1-409 adopted effective June 22, 1985. Amended effective June 14, 1990. Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000.

or secondary PSAP, the PSAP must receive a minimum of **300** *[emphasis added]* 9-1-1 emergency calls per month.”). As the Program evaluates increasing the minimum call volume threshold (see Recommendation in Section 5.4.1 of this report, regarding Code R2-1-408), it must take action to resolve those PSAPs that do not meet the minimum criteria. It is recommended that the Program put those PSAPs on notice that funding will be discontinued at a defined date in the future, giving the community a period of time to transition.

### 7.1.3 Use of Funds

ARS § 41-704 provides a very-high-level explanation of the eligible uses of the Arizona 9-1-1 fee and specifies that funds shall be used for “necessary or appropriate equipment or service for implementing and operating emergency telecommunication services.” The 9-1-1 Program has a limited list of eligible uses for funding that include network equipment, call-handling equipment, and equipment maintenance that fit the legacy infrastructure needs. The state 9-1-1 Program Administrator is authorized to consider special projects that further statewide 9-1-1 availability, including addressing or database projects, public education, and training programs on a case-by-case basis. NG9-1-1 equipment and implementation costs are not on the list of eligible uses for funding.

As noted above in Section 7.1.1, the 9-1-1 fee has been reduced numerous times and due to these reductions, the Program has modified the list of eligible items and to denied funding for new PSAPs, additional PSAP workstations (i.e., call handling or dispatch positions), reimbursement for logging recorders, and other items. As a result, there are four “unfunded” PSAPs in the state and situations where new PSAP workstations are not supported. Further, equipment upgrades are not completed because current practice does not enable this growth. Despite the self-imposed funding moratorium for new PSAPs several years ago by the Program, a fund balance of nearly \$8,000,000 has been accrued because all funds were not disbursed for several years. This large fund balance, despite having one of the lowest fees in the country, suggests that the very subjective and apparently arbitrary nature of determining eligible projects for funding for many years by the Program has resulted in the withholding of appropriate funding to assist state PSAPs in furthering their mission and deployment of NG911 capabilities. In addition, the state statute directs the Program to give priority to establishing emergency telecommunications services in areas of the state that are without emergency telecommunications service. The large fund balance could be used to support unserved and underserved communities that do not have adequate 9-1-1 services.

It is recommended that once the Program evaluates the PSAPs that will be funded, it should reevaluate the list of eligible costs that align with the statute to determine how best to address the current fund balance, the need to transition PSAPs to NG9-1-1, and its funding priorities that align to its vision and initiatives.

#### 7.1.4 Fund Protection

The statute related to administration of the 9-1-1 fund<sup>38</sup> allows for any unexpended monies and interest accrued on the fund to carry forward; however, it states that the funds should be used to reduce the levy on 9-1-1 providers for the following fiscal year. As stated in Section 5, Statutory and Regulatory Assessment above, while the statute identifies fund protections, the funds have been diverted in past years.

#### 7.1.5 Current Fund Distribution

The current Arizona Administrative Code, *R2-1-411, Allocation of Funds*<sup>39</sup> explains at a very-high level how funds are allocated. It reads:

*The following change access and wireless service line verification shall be conducted by the ADOA 9-1-1 Office each year:*

- 1. The Assistant Director shall request from the operating telephone companies providing 9-1-1 service, by February 15 of each year, the number and type of exchange access lines in each telephone exchange area in this state and the amount of 9-1-1 excise tax generated in each telephone exchange area in each county.*
- 2. The Assistant Director shall request, by February 15 of each year, from each wireless service provider the number of activated wireless service lines within the state and the amount of 9-1-1 tax generated.*
- 3. Each 9-1-1 planning committee that has a Certificate of 9-1-1 Service Plan Approval shall be apportioned a percentage of monies on deposit in the fund. Payment shall be made directly to the vendors identified in the 9-1-1 service plan.*
- 4. If the combined statewide 9-1-1 service costs exceed the available monies in the fund, monies shall be allocated by the Assistant Director on a percentage basis determined by the ratio of revenue to expenses for the state as a whole.*

Although the Program may have requested access line counts from telephone companies and wireless service providers in the past, there is no evidence that there is a regular process. MCP was also unable to identify any documentation explaining how the funds are apportioned as outlined in the Code. It appears that the amount of funding that systems receive is based on neither the amount collected in that area nor on the population percentage. Rather, funds are distributed based on each of the approved budgets from previous years. In rare cases, funds are distributed based upon a business case provided in the yearly fund application.

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<sup>38</sup> A.R.S § Title 41, Chapter 7 Section 41-704

<sup>39</sup> A.R.S. §Title 2, Chapter 1, Article 411 <https://grants.az.gov/sites/default/files/media/911AdminRules.pdf>

Although the Code does not specify the amount or percentage to apportion to each PSAP / 9-1-1 planning committee, the current distribution model lacks transparency and possibly equity.

#### 7.1.6 Current Invoice Payment Process

Currently, vendors send their invoices to the 9-1-1 System Administrator, who reviews and certifies the invoices and then mails them via U.S. Postal Mail to the Program, where the expense is verified as eligible based on the system administrators' certification and then the invoice is paid directly to the vendor. If a discrepancy is noted, the Program works with the system administrator or vendor to resolve the discrepancy. The State is not party to the contracts for services and does not have the authority to negotiate billing discrepancies nor pay the vendors outside its own procurement and accounting policies and practices. This inefficient process may result in significant late-payment penalties (ultimately borne by the Program) given the amount of time it takes for all approvals to occur. Changes to improve this process have been proposed but will not be effective until FY2020 (July 1, 2019), as discussed below in Section 7.2.8.

While gathering data regarding the Program's current accounting processes, MCP learned that in 2017, the Program negotiated the terms of a managed services solution with a service provider that was not conducted in accordance with the state's procurement policies. The service provider is a vendor of network and customer premises equipment (CPE) on the state contract and is the predominate 9-1-1 service provider in the state.

Although there is a current state contract for CPE and network equipment, the contract does not cover 9-1-1 network or managed services. No documentation was provided indicating that the managed services solution was added to the state contract through an official procurement process. The managed services solution includes NG9-1-1 call routing, CPE and network equipment that connects the CPE. The managed services solution is billed based on a "per seat" charge and is supported and managed by the vendor, as opposed to the PSAP managing and maintaining the CPE equipment onsite.

The State of Arizona does not have contractual relationships directly with the vendors for the services provided or with the PSAPs to act on their behalf; therefore, the Program is not in compliance with state procurement and accounting policies when paying these invoices on behalf of the PSAPs. Without this contractual relationship, the responsibility for payment for services lie with the PSAPs. MCP recommends the Program consider publishing an RFP for statewide ESInet service. A solution derived from an appropriate open and competitive procurement will ensure alignment with state laws and regulations and also ensure the citizens are receiving the best value in the solution.

#### 7.1.7 Current Funding Request Process

The 9-1-1 Program has a policy that outlines the yearly process for requesting funding and this handbook is provided to 9-1-1 system administrators during initial training. The process is documented and provides step-by-step instructions on how to submit the funding request. However, MCP could find no documentation on how the Program determines the amount of funding to distribute based on requests. In a PSAP data document that was provided to MCP, there was a list of PSAPs with the number of funded and

unfunded workstations/positions listed for each. However, there is no explanation of any objective criteria used by the Program to determine the number of workstations/positions per PSAP.

## 7.2 Funding Recommendations

Based on MCP's expertise and review of the state 9-1-1 Program, and leveraging best practices that exist at the national-level, the following recommendations are provided for consideration:

Recommendations for Funding Changes	
7.2.1	Assess 9-1-1 Fee
7.2.2	Enhance Fund Protections
7.2.3	Establish PSAP Funding Eligibility Criteria
7.2.4	Review Technology Design and NG9-1-1 Options
7.2.5	Document the Projected 9-1-1 Budget
7.2.6	Develop Funding Distribution Methodology
7.2.7	Develop and Document Funding Policy
7.2.8	Revise Invoice Payment Process
7.2.9	Apply the Funding Distribution Methodology (Phase 1 – Short-Term Roadmap)
7.2.10	Apply the Funding Distribution Methodology (Phase 2 – Long-Term Roadmap)

### 7.2.1 Assess 9-1-1 Fee

Not only does Arizona have the lowest 9-1-1 fee assessed in the U.S., its 9-1-1 fee is significantly lower than five states in its region: California, Colorado, New Mexico, Texas and Utah.

Table 7: State 9-1-1 Fee Comparison

State	9-1-1 Fee	Prepaid Wireless Fee
<b>Arizona</b>	<b>\$0.20 per subscriber</b>	<b>0.80 of 1% of transaction</b>
California	0.75% (three-quarters of one percent) of intrastate voice revenue	0.75% (three-quarters of one percent) of intrastate voice revenue
Colorado	Range \$0.45-\$1.75	1.4% of transaction
New Mexico	\$0.51 per line	1.38% of transaction
Texas	\$0.50 per subscriber, plus \$0.06 911 equalization surcharge	2% of transaction

State	9-1-1 Fee	Prepaid Wireless Fee
Arizona	\$0.20 per subscriber	0.80 of 1% of transaction
Utah	\$0.80 per subscriber	1.9% at point of sale

MCP recommends that the Program collect data through a statewide study to determine whether a need exists to increase the fee. The assessment would help determine the actual number of PSAPs (and number of workstations/positions in each) needed to handle 9-1-1 service levels by examining call volume, calls for service, geography, population service, political environment, and average call-processing times. The Program should collect each PSAP’s total budget to determine the burden of operational costs borne by local jurisdictions that are not covered by 9-1-1 revenue.

This data would provide quantifiable insight for the Program to use when determining funding policies and needs. In addition to the recommendations in the Governance section of this report about creating a strategic plan<sup>40</sup> with funding priorities, MCP also recommends that the Program begins to track the following data to most accurately determine the real cost of implementing NG9-1-1 service:

- Total amount of funding requested
- Total amount of requests funded
- Cost to fund currently “unfunded” PSAPs
- Projected cost from an RFP for NG9-1-1 services
- Special project costs funded over the past three years
- Costs for the items that are added back into the eligible fund costs
- Data collected in the RFP that reviews NG9-1-1 solutions

With the data collected, the Program should perform an in-depth funding analysis to determine the funding needs and priorities.

Notwithstanding the current funding needs, the maturation and full deployment of NG9-1-1 will require additional funding for things like cybersecurity services, outreach and training, network and security monitoring, and interfaces with neighboring state ESInets. Additionally, stakeholder interviews revealed that local entities were not procuring any equipment or providing any services that were not funded through the 9-1-1 service fee, especially in rural areas where local funding is scarce. Without consistent, adequate NG9-1-1 funding generated by a strategically calculated 9-1-1 fee, local PSAPs may choose not to offer NG9-1-1 services to their communities. This would result in varying levels of service provided to 9-1-1 callers across the state and potentially an increased risk for technical failures resulting in service interruption. Arizona must generate enough revenue to cover current costs and provide adequate baseline funding for NG9-1-1.

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<sup>40</sup> Recommendation about a Strategic Plan can be found in 4.2.2.

To allow for future NG9-1-1 advancements, ideally the state should have the ability to adjust the fee up to a certain amount, authorized by statute, and based on identified needs and funding requirements.

### 7.2.2 Enhance Fund Protections

To help Arizona remain eligible to participate in federal 9-1-1 grant programs, and to further ensure 9-1-1 fund protection, MCP recommends that language be updated to allow the funds to carry forward for 9-1-1 use in alignment with strategic planning and to strengthen the language that provides protection from the funds being diverted to the general fund and used for non-9-1-1 purposes or to reduce the 9-1-1 levy. It is important for the Program to designate or encumber all funds to avoid the perception of having “excess” funds. Historically, the appearance of excess funds resulted in funds being diverted and a reduction in the 9-1-1 levy.

### 7.2.3 Establish PSAP Funding Eligibility Criteria

Today, the Program lacks established criteria for adding or funding new PSAPs or funding existing PSAPs. Therefore, MCP recommends that the Program takes action based on information in this report to establish clear funding eligibility requirements that are codified in statute and Administrative Code.

The Program should revise its definition of primary and secondary PSAPs and set a clear policy about the minimum technical, operational, and policy requirements that must be met to receive funding. With the rising costs associated with technology advancements and PSAP operations, it is not economically sustainable or efficient for Arizona to add new PSAPs without careful consideration and clearly defined criteria. While definitions of a primary PSAPs differ from state to state, common elements require that it will:

1. Operate on a 24-hour basis
2. Be the first point of contact with the 9-1-1 caller
3. Either directly dispatch the call to the first responder or transfer/relay 9-1-1 calls to another agency to dispatch
4. Use call handling equipment that receives automatic number identification (ANI) / automatic location information (ALI) data from the originating service provider
5. Communicate with the deaf or hard-of-hearing using telecommunication device for the deaf (TDD) / teletypewriter (TTY) technology at every call handling position

Depending on the political climate and the state’s needs, Arizona could decide to fund only one PSAP per county, like some states, or decide not to fund any new PSAPs after a specific date. California has a 9-1-1 Operations Manual<sup>41</sup> that contains a very thorough funding policy for adding a new PSAP, which details numerous criteria that must be met before funding is considered, such as:

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<sup>41</sup> <http://www.caloes.ca.gov/cal-oes-divisions/public-safety-communications/ca-9-1-1-emergency-communications-branch>

- The level of service the PSAP must provide
- PSAP confirmation of future levels of service
- Detailed operational plans
- Commitment to providing NG9-1-1 service
- Commitment to support text-to-9-1-1 service within 12 months of becoming a PSAP

Further, MCP recommends that the Program uses facilitated sessions to collect feedback from 9-1-1 stakeholders to help develop the funding criteria and associated policies for this process. Stakeholders should weigh in on the following:

- The process for adding a new PSAP, additional workstation/position, or consolidation
- The policy about funding secondary PSAPs, the definition of a secondary PSAP, and the criteria for funding / not funding federal, tribal, and/or private PSAPs

The Program should consider incentivizing collocation or consolidation of PSAPs to improve efficiencies and lower costs while supporting more coordinated responses and greater interoperability. Historically, PSAP consolidation has had a negative connotation within the 9-1-1 community, because it has sometimes meant a reduction in the number of personnel. It is true that some consolidation efforts result in “physical” changes, where one PSAP absorbs the work of another and is then decommissioned. However, one opportunity when implementing NG9-1-1 is to “virtually” consolidate PSAPs, eliminating duplicate systems and sharing technology solutions across multiple PSAPs or throughout a region. The physical PSAPs remain separate and operational, but efficiencies are gained by reducing capital, operational, and maintenance costs.

#### 7.2.4 Review Technology Design and NG9-1-1 Options

During stakeholder interviews, several PSAPs expressed concern about the lack of Program engagement when making the decision to secure the managed services solution. Several PSAPs expressed a belief that other solutions may better meet their needs. MCP recommends that the Program consider hosting vendor information sessions and conduct due diligence to learn about other vendor offerings and technology. Then the Program could initiate an RFP to understand available NG9-1-1 options and put all equipment and services on the state contract. Standardizing requirements, as well as terms and conditions, will improve interoperability, be more cost effective, and offers the opportunity to share technology solutions across multiple PSAPs.

#### 7.2.5 Document the Projected 9-1-1 Budget

In addition to documenting the fund distribution policy, MCP recommends that the Program documents the projected 9-1-1 budget—based upon historical revenues, carrier audits and projected revenue—each year when the grant process is opened. The budget also should specify the amount allocated per PSAP as outlined in the Administrative Code and should specify what the allocation is based upon. As the Program develops options to its existing funding distribution method (see Section 7.2.6, below), the resulting solution must be documented and clearly communicated in meetings with PSAPs in order to improve transparency with the 9-1-1 community.

## 7.2.6 Develop Funding Distribution Methodology

Because Arizona lacks a clear model explaining how it distributes funds to 84 PSAPs, the Program must develop a consistent funding-distribution methodology and clearly communicate it to the local 9-1-1 jurisdictions.

When evaluating fund distribution methods, other states have first established 9-1-1 revenue needs based on the number of PSAPs within their state and past budget expenditures. In this situation, the state would determine the approximate amount of funding needed to support the number of PSAPs based on the eligible costs and increase the 9-1-1 levy to collect the amount needed. There would be a determination on the extent to which the state would provide funding to cover eligible costs.

Arizona can model its methodology on those used in other states. Frequently-used distribution formulas / methods include:

- **Population-Based Formula:** Funding for eligible PSAPs is based on population served by each PSAP
- **Call Volume Formula:** Funding is based on call volume data provided by each PSAP
- **County-Based Approach:** Similar to population-based, funding would be allocated by population served by each county and the county would be tasked with distributing it between all PSAPs in that county (states that have used this approach were doing so to force consolidation to one PSAP per county)
- **Hybrid Approach:** Some states use a population or call volume formula for a percentage of the fund distribution (e.g., 50%, 65%, 83%, etc.), with the remain portion of the fund allocated via a competitive grant program. States that use this method will provide funding equally for all PSAPs and then fund (typically capital) program using a needs-based, prioritized criteria to award the remaining portion of the fund. In this manner, states can prioritize and incentivize outcomes such as shared equipment purchases. Some states will limit the amount or frequency of grant request.
- **Emergency Funding Request:** Some states will reserve a certain portion of their fund to be used to assist PSAPs with emergency situations (a request to repair or replace PSAP equipment that without the funding, would severely impair the PSAP's ability to answer or process 9-1-1 calls). Emergency funding request would be approved on a case-by-case basis and typically would have additional restrictions (e.g., reduction of future grant awards) to prevent misuse of this exceptional situation.
- **Statewide Projects:** Although not currently supported by state statute, some states will reserve a portion of the 9-1-1 fund for statewide projects, such as NG9-1-1 and implementing a statewide ESInet. These statewide projects benefit all PSAPs across the state and have been found to be an efficient and cost-effective use of 9-1-1 revenue.

Whichever method Arizona uses for disbursing funds, it should be fair and equitable, and meet the varied needs of the PSAPs within the state. It is recommended that the Program solicit input and feedback from 9-1-1 stakeholders to establish priorities and funding criteria. This will help overcome the concerns about the lack of transparency in how funds are distributed that were expressed during stakeholder interviews.

### 7.2.6.1 Review and Assess Number of Call Answering Positions

One driver of cost is the number of call answering workstations/positions at each PSAP. While every PSAP should have a minimum of two workstations/positions, the number of workstations/positions authorized should be adjusted based upon nationally recognized standards. Standards from the NENA, APCO and NFPA all have standards that speak to minimum equipment and staffing levels required to support the PSAP's incoming call volume. When reviewing PSAP busyness, the "Erlang C" calculation model is often used in conjunction with PSAP metrics, such as:

- Number of calls for the 10 most busy ("peak") hours over the past 12 months
- Number of calls per year
- Length of average call from answer to disconnect/transfer

It should be recognized that some PSAPs have unique requirements that necessitate additional workstations/positions and that PSAPs may elect to retain workstations/positions beyond what are reimbursed through state funding. However, when determining the number of workstations/positions for new PSAPs or those PSAPs that are consolidating, the number of workstations/positions should be determined based on established criteria.

### 7.2.7 Develop and Document Funding Policy

Once the Program has agreed on the funding methodology, the Program must document its funding policy as a part of the program policy manual recommended in Section 6.2.2, Develop a Program Policy Manual. The funding policy should include the following components:

- State 9-1-1 budget
- State funding priorities (based on strategic goals in the *Arizona 9-1-1 Strategic Plan*)
- Fund management
- Fund allocation formula
- Fund distribution process
- Funding eligibility requirements/criteria
  - List of eligible items
  - System lifecycle replacement schedule / limits
  - Criteria for funding primary PSAPs
  - Local 9-1-1 authority reporting requirements
- Stakeholder involvement in priority and criteria setting

### 7.2.8 Revise Invoice Payment Process

To bring the Program into compliance with state fiscal rules and to streamline payments to vendors, GFR will leverage the State's eCivis Grant Portal for 9-1-1 system administrators to submit annual funding request and submit invoices for approval. Once approached by the Program, funds are distributed to the

9-1-1 system administrator for payment. Effective with the FY2020 budget cycle (July 1, 2019), the new process will simplify the approval process and eliminate the likelihood of late fees and penalties.

Changes to the Administrative Code will be required to align the Code with this new process. In addition, because the system administrators are mostly volunteers,<sup>42</sup> they are not currently authorized to sign contracts or checks for the region and are not the signatory on the vendor's contract. Without any legal authority, the administrators cannot be held accountable for the regional distribution or use of funds.

MCP recommends that the Program requires agreements or memoranda of understanding (MOUs) between the PSAPs and the system administrators that grant them legal authority to act on the PSAP's behalf. These agreements/MOUs should be submitted to the Program as part of the annual system service plan update.

#### 7.2.9 Apply the Funding Distribution Methodology (Phase 1 – Short-Term Roadmap)

Implementing a transparent, objective, and policy-based fund distribution methodology will take some time and should be applied in a two-phased approach. A short-term approach must be adopted to reset the distribution process, while the long-term process is developed, and stakeholders are invited to participate by providing input and feedback.

As part of the Phase 1 implementation, the Program will need to make several decisions, as previously discussed:

- Review and determine the list of PSAPs eligible for funding
  - Decide if all current PSAPs will be funded for the next funding period or if some PSAPs will be added or dropped from the program
  - The Program may determine it is in the best interest of the State to continue to fund all current PSAPs and establish a phase-out period for PSAPs that no longer meet its funding criteria (i.e., PSAPs that handle less than 300 calls per month, private PSAPs, etc.
  - The Program should consider funding PSAPs that are currently unfunded, but meet the revised eligibility criteria
- Review and update (as needed) the list of eligible uses of 9-1-1 funding
- Determine an interim funding formula
  - If the Program has not selected a formulaic method, one option would be to fund PSAPs based on past funding levels. For example, in 2015, when the Commonwealth of Pennsylvania transitioned to a new funding model, they provided PSAPs with 106 percent of the average of each PSAP's reimbursement over the last five years
- Determine the amount and percentage of PSAP costs that can be reimbursed, based on established criteria and the use of any existing fund balance.

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<sup>42</sup> With the exception of system administrators serving in the Maricopa region.

Once decisions have been made and criteria established, the Program should create a budget to allocate funds on a per-PSAP basis, covering required and eligible expenses for operating its 9-1-1 system. PSAPs would no longer request that funds be allocated, but instead would provide the required updated 9-1-1 service plan that includes contracted vendor information and funding needs projections.

Revenue collected through the 9-1-1 fee that is left over after funding local PSAP operations would go into a separate fund that would be used to fund special projects / grant requests, emergency requests, and/or statewide projects. Ideally, enough 9-1-1 revenue would be collected to fund all items required for 9-1-1 service and still provide for this separate fund. The Program would compare local funding requests for special projects with the priorities in the strategic plan to determine the highest return on investment and alignment with the state’s strategic direction.

This recommendation can serve as an interim step toward Phase 2, or it can stand alone as a path forward. The Program should continue to progress the funding methodology by implementing the recommendations in Phase 2 and takes the necessary steps to increase the 9-1-1 levy.

#### 7.2.10 Apply the Funding Distribution Methodology (Phase 2 – Long-Term Roadmap)

While Phase 1 is a viable option for working with the current revenue, Phase 2 will help further mature the 9-1-1 funding model and ensure informed funding decisions are being made to support the advancement of 9-1-1 and NG9-1-1 services throughout the state. At a high level, Phase 2 is dependent on creation of a strategic plan, 9-1-1 Program strategic decisions, and taking steps recommended in sections 7.2.1 – 7.2.10. These high-level steps provide the foundation for the long-term 9-1-1 roadmap and can be done in parallel. This is a long-term process, and each step will require Program decisions based upon engaged stakeholder feedback.

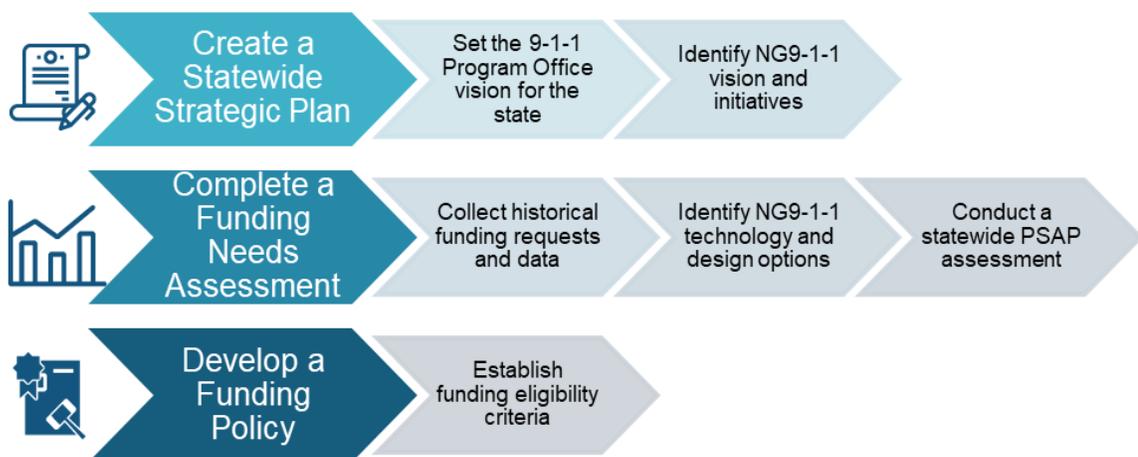


Figure 4: Long-Term Funding Roadmap

Specifically related to funding, Phase 2 would include the actions included in the table below.

Table 8: Phase 2: Funding Actions and Activities

Action	Activities
1. Collect Data to Inform Budget and Determine any Necessary 9-1-1 Fee Modification	<ul style="list-style-type: none"> <li>• Collect and analyze data points on:               <ul style="list-style-type: none"> <li>– Total amount of funding requested</li> <li>– Total amount of requests funded</li> <li>– Cost to fund currently unfunded PSAPs</li> <li>– Conduct vendor information-gathering sessions (RFI) to understand all NG9-1-1 solutions and determine appropriate options</li> <li>– Projected cost from an RFP for NG9-1-1 services</li> <li>– Special project costs funded over past 3 years</li> <li>– Costs for the items that are added to the eligible fund costs</li> </ul> </li> </ul>
2. Develop Funding Eligibility Criteria	<ul style="list-style-type: none"> <li>• Define criteria for adding a new eligible PSAP based on research</li> <li>• Review and finalize funding eligibility criteria</li> <li>• Engage stakeholders for input on process and policy</li> </ul>
3. Develop 9-1-1 Budget	<ul style="list-style-type: none"> <li>• Review collected data</li> <li>• Decide on funding distribution methodology               <ul style="list-style-type: none"> <li>– Agree to funding formula (e.g., population-based, lump sum to County)</li> </ul> </li> <li>• Release RFP</li> <li>• Establish surplus fund</li> </ul>
4. Update and Document Funding Policy	<ul style="list-style-type: none"> <li>• Ensure Code/statute reflect process and protect the fund</li> <li>• Communicate policy to stakeholders</li> <li>• Document policy in 9-1-1 Program policy manual</li> </ul>
5. Revise Invoice Payment Process	<ul style="list-style-type: none"> <li>• Depending on governance discussions, develop MOUs between PSAPs and system administrators so they can legally approve invoices</li> <li>• Depending on outcome of RFP/vendor meetings</li> </ul>

It is important to remember that it may take a few budget cycles and further information from the PSAPs to determine their average costs. Adjusting the 9-1-1 fee will require time from both the Program and stakeholders, along with more detailed analysis of services in the state. However, utilizing this option will

provide the Program and stakeholders with a more robust funding methodology based on actual needs and data.

## 8 Recommendations

Throughout this assessment, MCP has identified many recommendations for the 9-1-1 Program. It will take time to analyze the information and plan future actions based upon the recommendations; however, some action must be taken immediately to support and implement future recommendations.

Table 9 below highlights the short-term recommendations. These steps must be taken before the Program can implement the long-term recommendations listed in Table 10.

Table 9: Short-Term Recommendations

Section	Subsection	Recommendation
9-1-1 Program	3.2.1	Develop a Policy and-Procedure Manual that outlines the 9-1-1 Program’s roles and responsibilities. Train all Program staff on the policies.
Governance	4.2.1	The Program should continue to pursue the proposed SIEC structure and standing 9-1-1 subcommittee because each will offer the opportunity for collaboration and stakeholder involvement.
Governance	4.2.2	Modify the current state 9-1-1 plan to establish a 9-1-1 Program strategic plan and evolve the document into a more strategic, plan that encompasses the Program’s vision, mission, and strategic initiatives that will advance 9-1-1 service throughout Arizona.
Statute and Regulatory	5.2.1	Determine alignment between the state statute and the Administrative Code, which gives the Program its responsibility and the authority it needs to move forward with NG9-1-1.
Statute and Regulatory	5.4.1	Update the Code to accommodate existing technology, to prepare for the transition to new state administrative roles, and to revise terminology and program functions.
Funding	7.2.1	Complete a funding needs assessment to understand the legacy 9-1-1 and future NG9-1-1 costs for the state.
Funding	7.2.3	Establish PSAP funding eligibility criteria.

Table 10: Long-Term Recommendations

Recommendation Number	Subsection	Recommendation
<b>Program</b>		
1	3.2.1	Implement a regular review (at least annually) of the Policies and Procures Manual
2	3.2.2	Revise organizational roles and responsibilities
3	3.2.3	Expand staff duties
4	3.2.4	Add future staff roles
<b>Governance</b>		
5	4.2.2	Revise and evolve the Arizona State 9-1-1 Plan to create two documents: 1) Arizona 9-1-1 Program Strategic Plan; and 2) the Arizona NG9-1-1 Implementation Plan
6	4.2.3	Develop a communication plan
<b>Statutory/Regulatory</b>		
7	5.2.2	Align statute and Code with National 911 Program guidelines as outlined in Appendix C
8	5.3.1	Update statute language to add new and emerging technology elements, change title and responsible agency, add statewide coordination language, and clarify the Program's role in the new environment
9	5.3.2	Update statutory language regarding the annual service provider audit to include more-generic and technology-neutral language.
10	5.3.3	Ensure liability protection for the Program
11	5.3.4	Add liability protection for NG9-1-1 technology providers
12	5.3.5	Evolve or dissolve the system administrator role

Recommendation Number	Subsection	Recommendation
13	5.3.6	Engage and educate stakeholders and business community regarding federal MLTS legislation and determine whether statute changes are appropriate
14	5.4.2	Require a comprehensive statewide strategic 9-1-1 plan
15	5.4.3	Update statute to require annual updates to the system service plan for each PSAP jurisdiction, require annual updates, and make them a condition of funding
16	5.4.4	Add responsibility to establish funding criteria, priorities and distribution process
17	5.4.5	Amend the Code to require local jurisdictions to have an interagency agreement with neighboring jurisdictions
<b>Policy</b>		
18	6.2.1	Establish a policy-development methodology that can serve as the roadmap for setting 9-1-1 policy
19	6.2.2	Develop a Program policies and procedures manual to establish baseline expectations.
20	6.2.3	Clarify and communicate 9-1-1 fund distribution policy
21	6.2.4	Formalize a process for reviewing policies annually to identify modifications to existing policies or to add new policies
<b>Funding</b>		
22	7.2.2	Update statute to allow funds to carry forward for 9-1-1 use in alignment with strategic planning, and enhance fund protection
23	7.2.4	Review technology design and initiate an RFP to understand available NG9-1-1 options and add services on the state contract
24	7.2.5	Document the projected 9-1-1- budget based upon historical revenues, carrier audits and projected revenue
25	7.2.6	Develop funding distribution methodology

Recommendation Number	Subsection	Recommendation
26	7.2.7	Develop and document funding policy as part of the policies and procedures manual
27	7.2.8	Revise invoice payment process
28	7.2.9	Apply Phase 1 of the funding distribution methodology
29	7.2.10	Apply Phase 2 of the funding distribution methodology

## 9 Conclusion

Arizona’s 9-1-1 Program is in the midst of a significant transformation that ultimately will improve the service it provides to the 9-1-1 community, which in turn will help protect all those who live, work, or visit the state. The assessment identified several areas of program operations that require immediate attention to improve transparency, establish consistent and objective policies, and to restore stakeholder trust in the Program.

Seven recommendations are the highest priority:

- Developing a Program Policy and Procedure Manual
- Pursue the proposed SIEC governance structure
- Establish a State 9-1-1 Strategic Plan
- Align and revise the state statute and Administrative Code
- Complete a funding needs assessment
- Establish PSAP funding eligibility criteria

With recent staff changes and new employees, it is important for the Program to leverage services within the GFR or other state departments (and potentially subject matter expert consultants) to establish “quick wins” with the 9-1-1 stakeholder community. Twenty-nine long-term recommendations are provided to help mature the program, improve efficiencies, and to provide the foundation for a strong, visionary program, that will lead the state to fully-implement NG9-1-1.

This transition will likely encounter challenges and setbacks along the way. Embracing the input and insight of the many passionate and dedicated 9-1-1 professionals will help mitigate the risks and speed progress toward achieving the Program’s strategic goals.

## Appendix A – 9-1-1 Program Responsibilities

Responsibility Areas	Tasks Currently Performed	Tasks Not Currently Performed
Legislative	<ul style="list-style-type: none"> <li>PSAP Compliance</li> </ul>	<ul style="list-style-type: none"> <li>Statute changes</li> <li>Code changes</li> <li>Political support/advocacy</li> <li>Measurement and outcomes</li> </ul>
Policy	<ul style="list-style-type: none"> <li>Rules interpretation of legislative and code changes</li> </ul>	<ul style="list-style-type: none"> <li>Strategic planning</li> <li>Policy development</li> <li>Measurement and outcomes</li> <li>External/internal policy conformance monitoring</li> </ul>
Funding	<ul style="list-style-type: none"> <li>Reporting</li> <li>PSAP Compliance</li> </ul>	<ul style="list-style-type: none"> <li>Procedures</li> <li>Distribution</li> <li>Compliance</li> </ul>
Governance	<ul style="list-style-type: none"> <li>N/A</li> </ul>	<ul style="list-style-type: none"> <li>Oversight body</li> <li>Strategic planning</li> <li>Board/commission/committee</li> </ul>
Technology	<ul style="list-style-type: none"> <li>Management/oversight</li> <li>Implementation coordination</li> <li>Maintenance</li> </ul>	<ul style="list-style-type: none"> <li>Procurement support</li> <li>Performance and standards</li> <li>Compliance/interconnection</li> <li>Virtualization</li> <li>Physical security</li> <li>Cybersecurity</li> <li>Continuity of operations (redundancy/backup)</li> <li>Interoperability</li> </ul>
Information and Content Management	<ul style="list-style-type: none"> <li>Data rights</li> <li>Access control</li> <li>Database development and standards/MOU maintenance                             <ul style="list-style-type: none"> <li>IP network analytics</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Central repositories/web services</li> <li>Database Development and Standards/MOU maintenance                             <ul style="list-style-type: none"> <li>Statewide GIS</li> <li>Text-to-9-1-1</li> </ul> </li> <li>Reporting, analytics, and forecasting</li> </ul>

Responsibility Areas	Tasks Currently Performed	Tasks Not Currently Performed
Operations	<ul style="list-style-type: none"> <li>• Routing</li> <li>• Outage Monitoring</li> </ul>	<ul style="list-style-type: none"> <li>• Load-sharing</li> <li>• Interoperability</li> <li>• Contingencies</li> <li>• Security</li> </ul>
Communication & Outreach	<ul style="list-style-type: none"> <li>• Relationship management (PSAPs/vendors/intra-department/inter-department)</li> <li>• Some training</li> <li>• Stakeholder engagement</li> <li>• Customer support</li> <li>• Public education</li> </ul>	<ul style="list-style-type: none"> <li>• Minimum training standards requirements</li> </ul>

## Appendix B – Stakeholder-Driven Governance Groups

State	Stakeholder-Driven Governance Groups
Tennessee	<p><a href="#">The Tennessee Emergency Communications Board (TECB)</a> consists of nine members comprising county and city government representatives, a public citizen representative, and six regional representatives from the 100 emergency communication districts (ECDs) in the state—which are similar to county PSAPs. The TECB receives input directly from the ECDs through meetings, annual town hall meetings, a newsletter, surveys, conferences and TECB committee participation.</p>
Virginia	<p><a href="#">The 9-1-1 Services Board</a> is a 16-member board with public safety representatives appointed by the Governor for five-year terms. Members reflect regional diversity and diverse public safety disciplines and the group coordinates with the Regional Advisory Committee (RAC) regional coordinators at the state level to provide input and policy direction.</p>
Maryland	<p>The <a href="#">Maryland Emergency Numbers System Board (ENSB)</a> has statewide and discipline-specific stakeholder representatives. The ENSB's 17 members represent diverse disciplines across public safety and are appointed to four-year terms by the Governor with Senate advice and consent. The Governor names the chair.</p>
Minnesota	<p>The <a href="#">Statewide Emergency Communications Board (SECB)</a>, five regional communications boards, and two regional emergency services boards all work together to manage all aspects of emergency communications in the state (i.e., radio, FirstNet/NPSBN, IPAWS, 9-1-1). Reporting to each board are subcommittees and workgroups.</p>
Pennsylvania	<p>The <a href="#">Pennsylvania Emergency Management Agency (PEMA)</a> uses a 9-1-1 advisory board and engages 9-1-1 stakeholders throughout the state who participate on a voluntary basis. It includes 19 voting members, six of which are 9-1-1 coordinators representing the state's regions.</p>
Kansas	<p>The <a href="#">Kansas 911 Coordinating Council</a> was created by the Kansas 911 Act (K.S.A 12-5362 et seq) and is tasked with monitoring the delivery of 9-1-1 services and developing strategies for future enhancements to the 9-1-1 system. Council representatives—subject-matter experts having special background and experience with 9-1-1 and public safety—are appointed by the Governor. Council membership includes 17 voting members and nine non-voting members.</p>

State	Stakeholder-Driven Governance Groups
Michigan	<p>The <a href="#">State 911 Committee (SNC)</a>, which is a statutorily created committee under Michigan’s Public Act 32 of 1986, as amended, has 21 members representing local public safety, private sector, industry, and state services. SNC was established in accordance with the Emergency 9-1-1 Service Enabling Act to promote the successful development, implementation, and operation of 9-1-1 systems across the state of Michigan. The SNC meets quarterly, while its subcommittees may meet more frequently.</p>
Utah	<p><a href="#">Utah Communications Authority (UCA)</a> and its 9-1-1 division utilizes an operations advisory committee and regional advisory committees to work with local and state public safety stakeholders to implement a statewide NG9-1-1 system in the state.</p>
South Dakota	<p>The South Dakota <a href="#">911 Coordination Board</a> is an 11-member board with stakeholder members appointed by the Governor for staggered three-year terms. Board members represent cities, counties, professional organizations, associations and service providers.</p>

## Appendix C – Best Practices Gap Analysis

MCP applied the National 911 Program’s *National 9-1-1 Assessment Guidelines* to evaluate the state’s current legislation and make recommendations.

### STATUTORY/REGULATORY

The statutory and regulatory environment outlines the items that a state should have codified to enhance 9-1-1 system performance. This does not have to be within the 9-1-1 statutes, but can be from another area of statute. For example, privacy issues may be in a right-to-know statute. Examining these against a state’s current statutory and regulatory environment will enhance the service provided to the citizens and visitors to the state.

National 911 Program Guideline	Current Legislation	Recommendation
<p>SR1: The statutory environment provides for <b>comprehensive statewide 9-1-1 coordination</b>.</p>	<p>While the current statutory language states the Assistant Director’s responsibilities, there is no overarching statement that the department is responsible for statewide 9-1-1 coordination.</p>	<p>Explicit statement of authority should be given to the agency/department responsible for 9-1-1 oversight; this authority should be codified in statute.</p> <p>National 911 Program guidelines suggest that statewide coordination should include all 9-1-1 stakeholders, all 9-1-1-accessible services (e.g., wireline, wireless, voice over Internet Protocol [VoIP], NG9-1-1 and emerging technologies) and governmental and non-governmental entities.</p> <p>Comprehensive coordination includes statewide planning, funding support, stakeholder involvement, uniform statewide adherence to established technical and operational standards, influencing policy creation to the benefit of stakeholders, public education, training, enforcement, rulemaking, procurement authority, grant writing assistance, grant management, dispute resolution, and program evaluation.</p>
<p>SR2: The state has a <b>designated</b></p>	<p>Administrative Code R2-1-401 – Defines the Assistant Director position, but does</p>	<p>If the structure 9-1-1 activities change, or if the activities are assigned to a different</p>

National 911 Program Guideline	Current Legislation	Recommendation
<p><b>statewide 9-1-1 coordinator.</b></p>	<p>not state that the Assistant Director has responsibility for statewide 9-1-1 coordination.</p> <p>Current definition:</p> <ol style="list-style-type: none"> <li>"Assistant Director" means Assistant Director of the Information Services Division of the Arizona Department of Administration.</li> </ol>	<p>position/title, this reference also must change. The statute should be clear as to which position/title is designated as the state 9-1-1 coordinator.</p>
<p>SR3: The statutory environment <b>defines jurisdictional roles and responsibilities.</b></p>	<p>Administrative Code R2-1-404 – The <i>Certificate of Service Plan Approval</i> gives the Assistant Director authority to approve/disapprove 9-1-1 plans.</p>	<p>Clarify title and agency. The working title of the planning committee chairperson is 9-1-1 system administrator.</p> <p>The 9-1-1 Planning Committee, as referenced in Arizona statute, refers to the local agency planning committee that was constituted at the inception of 9-1-1 services in the jurisdiction. It does not refer to a state-level planning committee with stakeholder participation.</p> <p>The roles and responsibilities of the Assistant Director, 9-1-1 system administrator, etc. should be clearly defined.</p> <p>If there is a state-level review process for 9-1-1 plans, the relevant group and/or individual title and responsibilities also should be clarified.</p>
<p>SR4: The statutory environment provides for <b>dedicated and sustainable 9-1-1 funding.</b></p>	<p>Administrative Code R2-1-401 – Definition of "fund" means the emergency telecommunication services revolving fund established in A.R.S. § 41-704, <i>Emergency telecommunication services; administration; revolving fund</i>, subsection B.</p> <p>Regarding interest on the fund, § 41-704, subsection C, states: "At the end of each fiscal year, any unexpended monies in the fund, including interest, shall be</p>	<p>§ 41-704 also needs to change.</p> <p>Interest should be reinvested in the fund for use by the state grant program or other statewide 9-1-1 uses, but not to reduce the levy or provide additional reimbursement to providers.</p> <p>The funding mechanism should be technology-neutral, allow for capital and operational expenditures, and address capital replacement needs. Surcharge</p>

National 911 Program Guideline	Current Legislation	Recommendation
	<p>carried over and do not revert to the general fund but shall be applied to the extent possible to reduce the levy under § 42-5252, subsection A, for the following fiscal year.”</p> <p>Subsection B states: “The department may use up to two-thirds of the five per cent of the amounts deposited annually in the revolving fund for administrative costs.”</p> <p>Subsection B also authorizes establishment of an emergency telecommunication services revolving fund to be administered by the “director” (meaning the Department of Administration director).</p> <p>Sustainability of the fund is not addressed.</p>	<p>money dedicated to 9-1-1 only should be used for 9-1-1 purposes. The review should examine the dedicated revenue in relation to the uses established by Arizona. The statute should protect the revenue stream and establish a mechanism for adjusting it as conditions change.</p> <p>Wireless cost recovery is still in effect by statute; this should be removed as the question was settled by the FCC many years ago. Cost recovery by wireless carriers is not required. Those monies should be utilized to improve 9-1-1 service at the state and local level.</p> <p>Arizona should conduct an annual audit of all service providers to ensure that the 9-1-1 fund is receiving all revenues to which it is entitled. Further, service providers must be made to “certify” their subscribers as they exist today. Arizona statute requires this and the practice should continue; however, the reference should be more generic and technology neutral.</p>
<p>SR5: The statutory environment <b>prohibits the use of 9-1-1 funds for purposes other than those defined in the state’s 9-1-1 statute.</b></p>	<p>§ 41-704 defines how the 9-1-1 fund can be used, e.g., at the end of the fiscal year any unexpended monies including interest shall be carried over and do not revert to the general fund but shall be used to reduce the levy (fee collection).</p>	<p>Protection language appears to be adequate, but funds have been previously diverted anyway. In many cases, despite efforts to protect funds, government has the right to determine appropriate uses of the funds it collects. Every avenue should be considered to protect the 9-1-1 fund from uses other than those defined in statute. Some suggestions are provided for consideration:</p> <p>Virginia – “There is hereby created in the state treasury a special non-reverting fund to be known as the Wireless E-911 Fund (the Fund). The Fund shall be</p>

National 911 Program Guideline	Current Legislation	Recommendation
		<p>established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.”</p> <p>Kansas – 12-5368: “911 state fund and 911 state grant fund. (a) Upon the advice and consent of the 911 coordinating council, the LCPA<sup>43</sup> shall establish the 911 state fund and the 911 state grant fund which shall not be part of the state treasury. On or after the effective date of this section, the secretary of administration shall certify all unobligated funds remaining in the wireless enhanced 911 grant fund as having originated as either federal grant moneys or 911 fee moneys. All such moneys originating from 911 fees, and any interest accrued on such fees, shall be paid to the LCPA for deposit in the 911 state grant fund. All unobligated federal moneys, and any interest accrued on such moneys, shall be transferred to the 911 federal grant fund.”</p> <p>Kansas – 12-5374 (distribution of 911 fee moneys):</p> <p>“...Such moneys distributed to counties and PSAPs only shall be used for the uses authorized in K.S.A. 2015 Supp. 12-5375, and amendments thereto.”</p> <p>Pennsylvania – Act 12, § 5306.1 Fund (c) (3): “Money from the fund shall not be</p>

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<sup>43</sup> Local collection point administrator.

National 911 Program Guideline	Current Legislation	Recommendation
		<p>transferred for General Fund use by the Commonwealth or counties.”</p> <p>Minnesota – 403-11, Subdivision (b): “Money remaining in the 911 emergency telecommunications service account after all other obligations are paid must not cancel and is carried forward to subsequent years and may be appropriated from time to time to the commissioner to provide financial assistance to counties for the improvement of local emergency telecommunications services.”</p>
<p>SR6: The statutory environment <b>authorizes the operation of a 9-1-1 system.</b></p>	<p>Administrative Code R2-1-404 – The <i>Certificate of Service Plan Approval</i> gives authority to the Assistant Director to approve/disapprove 9-1-1 plans. It also allows local 9-1-1 authorities to submit plans to operate 9-1-1 systems, but there is no explicit assignment of statewide coordination other than the authority to approve individual plans.</p>	<p>Add NG9-1-1 statewide coordination as a role/responsibility of the state Program.</p> <p>Retain language that allows the statewide 9-1-1 system administrator to approve/disapprove 9-1-1 plans. The process and criteria for plan approval should be documented.</p>
<p>SR7: The statutory environment provides for <b>interlocal cooperation.</b></p>	<p>None.</p>	<p>There is no state-level authorized planning committee, only local 9-1-1 planning committees. MCP recommends (see Governance section in this report) that a state-level key stakeholder group be made part of the process of state-level oversight responsibilities. This involvement may include plan review, policy development, or recommendations regarding guidelines, standards and best practices.</p> <p>In addition, the state should ensure that interlocal agreements exist between PSAP jurisdictions or regional authorities through the system service plan update process.</p>

National 911 Program Guideline	Current Legislation	Recommendation
<p>SR8: The statutory environment enables and <b>allows public and private cooperation</b> in providing 9-1-1 services required by statute.</p>	<p>None.</p>	<p>This guideline refers to the ability of the state agency to procure services from private entities—for example network providers or third-party GIS services—to provision 9-1-1 services. Other examples include a statewide educational institution that operates a broadband network throughout Arizona to link its educational facilities. Such a network might be implemented via a contract between the educational entity and the broadband provider, and might be leveraged as a backbone or backup system to support 9-1-1 service. This might require a state 9-1-1 agency to contract directly with the educational institution or the broadband provider. Statute needs to permit this sort of public/private arrangement.</p>
<p>SR9: The statutory environment provides contractual <b>authority to procure and/or operate statewide 9-1-1 components.</b></p>	<p>None.</p>	<p>Statute should provide explicit authority to procure and/or operate services at the state level.</p>
<p>SR10: The state fosters an open and <b>competitive procurement of 9-1-1 services.</b></p>	<p>To assess the state’s compliance with this guideline, Chapter 23 Arizona Procurement Code was reviewed along with other pertinent purchasing code/rules.</p> <p>The purpose of this chapter (and Laws 1984, Ch. 251, 1 and 40) is to:</p> <p>Subsection 5: “Ensure the fair and equitable treatment of all persons who deal with the procurement system of this state.”</p>	<p>From our assessment, it appears that Arizona fosters an open and competitive procurement process, which should be applied to the procurement of 9-1-1 services going forward to ensure transparency.</p> <p>In the rewrite of System Service Plan templates and documentation required as part of the grant process, Arizona should obtain a commitment from the local 9-1-1 jurisdiction applying for funds that it also fosters an open and competitive procurement methodology for that part of its grant request. This could be as simple</p>

National 911 Program Guideline	Current Legislation	Recommendation
	<p>Subsection 7: “Foster effective broad-based competition within the free enterprise system.”</p> <p>In addition, § 41-2532, <i>Methods of source selection</i>, stipulates that: “Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding as provided in section 41-2533, or as provided in sections 41-2534 through 41-2538 and sections 41-2554, 41-2558, 41-2559, 41-2572, 41-2578, 41-2579, 41-2581 and 41-2636.”</p>	<p>as checking a box on the template or as detailed as describing the process followed by the jurisdiction.</p>
<p>SR11: The statutory environment provides <b>liability protection</b>.</p>	<p>12-713 – <i>Providers of emergency services; civil liability</i></p> <p>“In the provision of 911 services, a person, a provider as defined in § 42-5251 or a public entity or any employee of the public entity is not liable for damages in any civil action for injuries, death or loss to a person or property that are incurred by any person with respect to all decisions made and actions or omissions taken that are based on good faith implementation except in the cases of wanton or willful misconduct, regardless of technology platform including a public safety radio communications network, that receives, develops, collects or processes information for the service's location information databases, relays, transfers, operates, maintains or provides emergency notification services or system capabilities, or provides emergency communications or services for ambulances, police and fire departments or other public safety entities.” See also 12-820.</p>	<p>MCP reviewed the definition of a public entity in Arizona (§ 41-1492) for additional clarification. "Public entity" means any: (a) state or local government and (b) department, agency, special-purpose district, or other instrument of a state or local government, including the legislature.</p> <p>We concur with the statements that 1) PSAPs and personnel appear to be covered and 2) PSAP personnel appear to be covered if providing EMD and first-aid and following protocols approved by medical direction in accordance with statute. The key phrase here is “good faith” and that PSAP personnel did not act with wanton or willful misconduct. If PSAP personnel did act with wanton or willful misconduct, then it is possible that the personnel and PSAP both can be held liable.</p> <p>MCP also analyzed the question of whether the state 9-1-1 Program is protected by the immunity statutes concerning decisions it makes that ultimately result in a service outage or disruption. §12-713 contains the following</p>

National 911 Program Guideline	Current Legislation	Recommendation
	<p>2005 Arizona Revised Statutes – Revised Statutes — §12-820.01 provides absolute immunity:</p> <p>Subsection A: A public entity shall not be liable for acts and omissions of its employees constituting either of the following:</p> <ol style="list-style-type: none"> <li>1. The exercise of a judicial or legislative function.</li> <li>2. The exercise of an administrative function involving the determination of fundamental governmental policy.</li> </ol> <p>Subsection B: The determination of a fundamental governmental policy involves the exercise of discretion and shall include, but is not limited to:</p> <ol style="list-style-type: none"> <li>1. A determination of whether to seek or whether to provide the resources necessary for any of the following: <ol style="list-style-type: none"> <li>(a) The purchase of equipment.</li> <li>(b) The construction or maintenance of facilities.</li> <li>(c) The hiring of personnel.</li> <li>(d) The provision of governmental services.</li> </ol> </li> </ol>	<p>phrase: “A public entity or any employee of the public entity is not liable for damages in any civil action for injuries, death or loss to a person or property that are incurred by any person with respect to all <b>decisions made and actions or omissions taken</b> that are based on good faith implementation except in the cases of wanton or willful misconduct.”</p> <p>Consequently, MCP believes that the state 9-1-1 Program would be covered if its decisions were made in good faith and it believed those decisions were in the best interest(s) of Arizona.</p> <p>From what we have reviewed, the law tends to give the benefit of the doubt to those who act in good faith, which protects them from liability. Nevertheless, every practice or process in the state 9-1-1 Program should be documented; the Program should seek a formal opinion from its legal support on this issue. To further limit risk, for each responsibility that is granted the Program by statute or code, there needs to be a policy that documents how that responsibility will be addressed and followed.</p>
<p>SR12: The statutory environment fosters the adoption of <b>technical and operational consensus standards</b> for the statewide system.</p>	<p>None</p>	<p>An SIEC is a good place to start to build an all-encompassing governance structure to oversee all aspects of communications in the state. Governance is essential for effective program management that meets the needs of the constituency.</p>
<p>SR13: A mechanism is in place for <b>periodic</b></p>	<p>Administrative Code must be reviewed by a formal process and submitted to the Governor’s Regulatory Review Council</p>	<p>No change recommended at this time. The statute provides the state 9-1-1 Program with the authority to request the</p>

National 911 Program Guideline	Current Legislation	Recommendation
<p><b>reviews of statutes and regulations.</b></p>	<p>(GRRC) every five years. If rule changes are identified, the agency starts a rule promulgation process to change the rules.</p> <p>§ 41-704 requires that the ADOA recommends to the Legislature every two years the amount of excise tax needed to conduct the 9-1-1 program activities.</p>	<p>amount of excise tax. There is a defined process, through the activities and responsibility of the GRRC, to look at all rules. The Program will participate in that process.</p>
<p>SR14: The statutory environment provides for <b>stakeholder involvement.</b></p>	<p>There is stakeholder involvement to a varying degree at the local 9-1-1 authority level. It is not a requirement but has become the practice. As the 9-1-1 system administrator role has matured over time, the local 9-1-1 authorities select an agency to provide the system administration services to a group of local authorities. That system administrator coordinates at the regional level and interacts with the state. The degree to which local 9-1-1 jurisdictions are involved as stakeholders varies by locality and region.</p> <p>Administrative Code R2-1-402 – <i>Establishment of a 9-1-1 Planning Committee</i></p> <ol style="list-style-type: none"> <li>To qualify for funding under § 41-704, subsection B, all public or private safety agencies in a specific geographic area to be served shall establish a 9-1-1 planning committee to develop a service plan.</li> <li>A 9-1-1 planning committee shall include representation from all public and private safety agencies located within the specific geographic area that have the authority to provide firefighting, law enforcement, ambulance, or other medical or emergency services.</li> </ol>	<p>The agreement between the local 9-1-1 authorities and the identified agency providing system-administration services should be written and formally adopted by the parties. Follow up and reporting to the parties on what has and is being done on their behalf—and as part of the system-administration services—should be communicated regularly and the process for doing so should be part of that agreement. Expectations of the parties should be clarified, compensation, if any, should be identified, and performance measurements should be outlined in the agreement.</p> <p>The state 9-1-1 Program should find a way to engage stakeholders in its processes and policy development if the proposed SIEC 9-1-1 subcommittee is not adopted.</p> <p>This requirement relates to the original service plan that was identified at the inception of 9-1-1 service in Arizona. This stakeholder involvement should be expanded to include overall planning and decision-making today and submission of annual system service plan updates.</p> <p>If the recommendation of the Program is accepted by the Governor and the SIEC is allowed to establish a 9-1-1 subcommittee under its current structure,</p>

National 911 Program Guideline	Current Legislation	Recommendation
		this also will facilitate stakeholder engagement at the state level.
<p>SR15: <b>Service providers</b> that deliver and/or enable telecommunications services to the public are involved in the 9-1-1 system.</p>	<p>Legacy 9-1-1 and NG9-1-1 service providers have worked with the state 9-1-1 Program to develop service offerings for local 9-1-1 authorities. A contract for managed services is not in place with the state. The contract is with the PSAP.</p>	<p>Clarify the support and technical expertise roles of the service providers in the governance structure going forward. New providers will be involved in NG9-1-1 systems in the future and their role, along with the role of the legacy service provider, likely will change the dynamic in Arizona. Service providers can provide needed technical assistance but should not be part of the governance and decision-making process that impacts them financially.</p>
<p>SR16: The statutory environment provides for a <b>comprehensive quality assurance (QA) program</b> for the 9-1-1 system.</p>	<p>None</p>	<p>Consider adopting a requirement or encouraging a QA program or, at the very least, funding it at the local level with 9-1-1 revenue. QA programs can help reduce liability and risk exposure. The state 9-1-1 Program should consider adopting nationally recognized best practices and QA programs, fund them at the local level, request reporting as part of the annual system service plan updates, and tie compliance to funding.</p> <p>QA programs might include network performance measures, outage reporting, service interruption repair thresholds, compliance with call-answer-time standards and reporting requirements that assist both the PSAP manager as well as the state 9-1-1 Program in assessing the effectiveness of the operation and technology.</p>
<p>SR17: The statutory environment provides comprehensive</p>	<p>The QA program should meet or exceed nationally recognized and accepted consensus standards. For example, call handling could include a call-answering standard of 90 percent of all 9-1-1 calls</p>	<p>Consider adopting a requirement for a QA program or, at the very least, funding it at the local level with 9-1-1 revenue. QA can help improve the 9-1-1 process. Providing QA can aid in the provision of consistent</p>

National 911 Program Guideline	Current Legislation	Recommendation
quality assurance <b>(QA) for call handling.</b>	within 10 seconds during the busy hour of the day, as well as standards concerning call overload, call overflow, and abandoned calls. This guideline is not limited to call answering, but encompasses the entire call-handling process, which can include customer feedback.	customer service statewide and can limit liability and mitigate risk exposure. The QA process can identify issues before they become more serious.
SR18: The statutory environment provides for <b>training.</b>	None	The state 9-1-1 Program should adopt the Recommended Minimum Training Guidelines as the basis for any telecommunicator training program funded by the state.
SR19: The statutory environment provides for professional <b>certification and accreditation.</b>	None	State certification of 9-1-1 centers, PSAP personnel, or accreditation of operations may be considered in the future; other governance needs to be in place before this may be a viable area for state involvement.
SR20: Statute exists for the provision of emergency medical dispatch <b>(EMD).</b>	Arizona has strong medical oversight for EMD (see SR21 below) already in place.	No recommendation.
SR21: Statutory environment provides for <b>medical oversight</b> of the policies and procedures governing the use emergency medical protocols.	<p>§ 36-2204 – <i>Medical control</i></p> <p>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:</p> <p>9 – <i>Standards for emergency medical dispatcher training, including prearrival instructions</i></p>	If an EMD program is implemented at a local level, the state requires medical oversight of policies and procedures. The state 9-1-1 Program should require the local 9-1-1 authority to certify compliance with medical oversight requirements in § 36-2204 in annual system service plan updates.

National 911 Program Guideline	Current Legislation	Recommendation
	<p>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.</p>	
<p>SR22: The statutory environment provides for <b>public education</b>.</p>	<p>Administrative Code R2-1-403, <i>Submission of Service Plan</i>, part 19, requires a plan for a public information program regarding 9-1-1 service. The 9-1-1 planning committee chairperson or designee will implement the program at least 30 days before 9-1-1 service begins.</p> <p>The Assistant Director, under R2-1-409, <i>Funding Eligibility</i>, may consider special projects that further statewide 9-1-1 availability, including addressing or database projects, public education, and training programs on a case-by-case basis. Special project funding is based on community needs and the availability of funds.</p>	<p>This reference is a holdover from the original implementation of 9-1-1 service in the state. However, the rule could be modified to mean that a description of the public education efforts currently underway or planned by the local 9-1-1 jurisdiction in the next year be included as part of the annual system service plan updates. A public education effort may be an ongoing general consideration—such as working with community school programs or public awareness campaigns about 9-1-1—or as specific as education about NG9-1-1 and text-to-9-1-1 if that is being implemented.</p>
<p>SR23: The statutory environment provides for the <b>collection of 9-1-1 system data</b>.</p>	<p>Requests for 9-1-1 system data, statistical information and other service performance data is part of the grant reporting process.</p>	<p>MCP recommends that Arizona considers adding rule language that allows the state to collect and aggregate data related to PSAP operations, such as the number of calls by type, call-answer-time averages, dropped calls, misroutes, GIS data accuracy, routing plans, continuity of operations plans, system down time, network up time, etc. Further, local 9-1-1 authorities should be required to provide such data as part of their system service plan modifications and funding requests.</p>
<p>SR24: The statutory environment has <b>rules for retention of 9-1-1 call</b></p>	<p>National 911 Program guidelines state that in the current 9-1-1 environment, a record is limited to call logs. In the NG9-1-1 environment, a record will include other information transmitted,</p>	<p>Arizona has a solid data-retention policy that is established and has rules for reporting that are written and consistent with statute. A certification process that the local 9-1-1 authority understands, and</p>

National 911 Program Guideline	Current Legislation	Recommendation
<p><b>records and 9-1-1-related data.</b></p>	<p>acquired and recorded in the context of a call, such as video, text, medical data, and/or accident information. Some data will be stored in locations offsite from the PSAP that handled the call. Emerging technologies will need to be considered under this guideline as communication technology changes over time.</p> <p>Administrative Code R2-1-408 – <i>9-1-1 Operational Requirements</i></p> <p>5. Develop and maintain a system for recording 9-1-1 calls received by the PSAP. The records shall be retained for at least 31 days from the date of the call and shall include the following information:</p> <ul style="list-style-type: none"> <li>(a) Date and time the call is received.</li> <li>(b) Nature of the problem.</li> <li>(c) Action taken by the dispatcher.</li> </ul>	<p>which complies with the current statute reference, should be included in the updated system service plan template.</p>
<p>SR25: The statutory environment defines <b>confidentiality and disclosure of 9-1-1 records.</b></p>	<p>National 911 Program guidelines state that while some portions of 9-1-1 data should be confidential in all states to avoid re-victimization, states should have leeway to establish their own rules. At a minimum, personally identifiable information should be protected, although more comprehensive protection of 9-1-1 records is desirable.</p> <p>The statutory environment should provide for the confidentiality and disclosure of automatic number identification/automatic location identification (ANI/ALI) data, 9-1-1 voice calls, and multimedia. Regulatory provisions, tariffs, confidentiality agreements, vendor non-disclosure agreements (NDAs), access to public records laws, and the Health Insurance Portability and Accountability Act (HIPAA) also may be considered in</p>	<p>Consider adding confidentiality and record disclosure protection language to the statute changes that are being considered for NG9-1-1 and the updates to structure and administration of the state 9-1-1 Program.</p> <p>In an NG9-1-1 environment, more personal data, such as medical or accident information, victim images and criminal scenes, may be relayed to the PSAP. Therefore, issues relating to confidentiality and disclosure will become more important.</p>

National 911 Program Guideline	Current Legislation	Recommendation
	this guideline. Different data types and their use should be reviewed, such as information provided to the first responders that could be misused.	
SR26: A statute/regulation exists that addresses multi-line telephone systems ( <b>MLTS</b> ) statewide for 9-1-1.	Arizona does not address MLTS. National 911 Program guidelines state that, “All MLTS should interface to 9-1-1 with call back and location information, regardless of the number of stations or square footage involved. The statute should be examined for improvements based on the stated criteria.”	There are several statute models available from states that already enacted MLTS laws. Arizona should consider adopting legislation to address the issue of accessing the 9-1-1 system from an MLTS and the accuracy of location information from such systems.
SR27: The statutory environment <b>identifies 9-1-1 as an essential</b> government service for states that are able to make the distinction.	“Essential status” is a labor-relations term that generally refers to a category of employees whose positions are so critical to public health and welfare that they are designated as “essential” without the right to strike. With an essential designation, salary and other compensation often need to be adjusted.	It is not within MCP’s purview to make recommendations on labor-relations issues in Arizona, and local 9-1-1 officials already may have addressed this issue in their respective communities. However, the state 9-1-1 Program may want to discuss this concept with its risk manager or legal support team to determine whether pursuit of essential status is in the best interest of Arizona’s citizens.

## GOVERNANCE

The governance environment outlines areas of stakeholder involvement with the 9-1-1 system. History has shown that cooperation enhances a 9-1-1 system, and with the diversity of stakeholders and user needs, the governance of the 9-1-1 system is critical.

National 911 Program Guideline Governance	Current Practice	Recommendation
GV1: The state has a comprehensive statewide 9-1-1 plan. A plan will foster consistent goals and advancement throughout the state.	Arizona has a statewide 9-1-1 plan, last updated in October 2017, which outlines the current 9-1-1 environment in the state in general and by county; identifies the wireless and wireline system providers; describes systems	Formalize the requirements of a statewide 9-1-1 plan in statute or administrative code.  Update the statewide 9-1-1 plan as follows:

National 911 Program Guideline Governance	Current Practice	Recommendation
	<p>that are exceptions to traditional implementations; and provides information on the budget process and eligible uses of the 9-1-1 fund. The current plan is more like an annual report than a strategy to accomplish system enhancements or improvements.</p>	<ul style="list-style-type: none"> <li>• Define the initiatives and desired outcomes</li> <li>• Outline the performance to be measured</li> <li>• Be technology and vendor agnostic</li> <li>• Create with stakeholder participation</li> <li>• Acknowledges and be consistent with other plans in the state that address emergency communications</li> <li>• Update on annual basis</li> </ul>
<p>GV2: An entity has authority and responsibility for statewide 9-1-1 coordination.</p>	<p>While the current statute language states the Assistant Director's responsibilities, there is no overarching statement that the state 9-1-1 Program is responsible for statewide 9-1-1 coordination.</p>	<p>Authority should be given to the agency/department responsible for 9-1-1 oversight, and an explicit statement to that effect should be codified in statute.</p> <p>National 911 Program guidelines suggest that statewide coordination should include all 9-1-1 stakeholders, all 9-1-1 accessible services (e.g., wireline, wireless, VoIP, NG9-1-1 and emerging technologies) and governmental and non-governmental entities. Comprehensive coordination includes statewide planning, funding support, stakeholder involvement, uniform statewide adherence to established technical and operational standards, influencing policy creation to the benefit of the stakeholders, public education, training, enforcement, rulemaking, procurement authority, grant-writing assistance, grant management, dispute resolution, and program evaluation.</p>
<p>GV3: Stakeholder groups participate in 9-1-1 planning, implementation, and change.</p>	<p>Stakeholder groups do not have input into the statewide 9-1-1 plan. However, the plan was</p>	<p>Until the SIEC proposal is approved by the Governor's office, the Program should facilitate regional PSAP</p>

National 911 Program Guideline Governance	Current Practice	Recommendation
	<p>communicated at system manager meetings and is documented and on the Program website.</p>	<p>representation on workgroups to gather input on immediate 9-1-1 initiatives.</p> <p>9-1-1 stakeholders should be represented at every stage of 9-1-1 service provisioning, including planning, implementation, updates, and modifications. Strong 9-1-1 programs incorporate stakeholder contributions. Decision-making without broad-based stakeholder input can increase costs, decrease desirable outcomes, and delay necessary changes.</p>
<p>GV4: A statewide board or advisory council provides input and oversight for statewide 9-1-1 system coordination.</p>	<p>ADOA has presented a proposal to the Governor's office for an SIEC.</p>	<p>Pursue the SIEC request with the Governor's office inclusive of a 9-1-1 subcommittee.</p>
<p>GV5: The state facilitates working relationships between 9-1-1 groups and other groups within the state that interact with 9-1-1.</p>	<p>The 9-1-1 Program does not officially facilitate working relationships between 9-1-1 and other stakeholder groups representing first responders. However, the Program staff does visit each system administrator region on a regular basis. This time in the field has been very instrumental in creating strong relationships and the feedback from stakeholders is that this time is helpful for asking questions and sharing information.</p>	<p>Actively pursue the creation of an SIEC to foster working relationships between all public safety stakeholders.</p> <p>Develop a 9-1-1 subcommittee under the SIEC to formalize stakeholder input and participation in planning and implementation of NG9-1-1 and other future 9-1-1 initiatives.</p>
<p>GV6: The ability exists within the state to facilitate essential partnerships statewide, across state lines, and for specific strategic purposes.</p>	<p>There is no single governance structure that engages various public safety stakeholders and associations.</p>	<p>Pursue the SIEC request with the Governor's office. In lieu of a formal governance structure, consider establishing committees or workgroups to facilitate ongoing discussion between various public safety stakeholders to ensure cooperation</p>

National 911 Program Guideline Governance	Current Practice	Recommendation
		and clear communication on the technology changes being adopted and the impacts to the daily operations of field personnel.
GV7: The state provides a statewide governance model for resource sharing and agreements between jurisdictions.	There is no statewide governance model for resource sharing and agreements between jurisdictions.	As identified in Section 6 – Policy Assessment, until the governance structure is established, the 9-1-1 Program can facilitate memoranda of understanding (MOU) or interagency agreements (IGA) to allow for sharing resources and services as needed and to encourage consistent call handling and operations.

## Appendix D – Statute Assessment

Five statutes pertain to the Arizona 9-1-1 Program and how 9-1-1 service is to be addressed, defined, funded and administered in Arizona. To assess these statutes, MCP consulted the National 911 Program’s Guidelines for State NG9-1-1 Legislative Language<sup>44</sup>, which is a compendium of best practices regarding model statute language, and the National 911 Program’s State Assessment Handbook<sup>45</sup> and report template; MCP also relied on its knowledge and experience with other state programs across the country.

### § 41-704: Emergency Telecommunication Services

This statute is addressed in the body of the report.

### Prepaid Wireless Telecommunications E911 Excise Tax

This statute deals with prepaid wireless service and the 9-1-1 tax to be applied.

Statute Assessment: Prepaid Wireless Telecommunications E911 Excise Tax – (Title 42, Chapter 5, Article 9) <a href="#">ARS § 42-5402</a> .		
Statute Section Reference	Current Assessment	Action Needed
A. A prepaid wireless telecommunications E9-1-1 excise tax is levied on every seller in an amount of eight-tenths of one percent of the gross proceeds of sales or gross income derived from the retail sale of prepaid wireless telecommunications service.	Meets current needs	No change required.
B. The seller is liable for the <b>tax imposed under this section</b> . The amount of tax may be separately stated on the invoice, receipt or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer. The seller may retain three per cent of the amount of tax collected before remitting the tax to the department.	Meets current needs	No change required.

<sup>44</sup> [https://www.911.gov/pdf/Guidelines\\_for\\_State\\_NG911\\_Legislative\\_Language.pdf](https://www.911.gov/pdf/Guidelines_for_State_NG911_Legislative_Language.pdf); version 2.0, 2018

<sup>45</sup> [https://www.911.gov/pdf/National\\_911\\_Program\\_State\\_Assessment\\_Handbook\\_Final\\_2017.pdf](https://www.911.gov/pdf/National_911_Program_State_Assessment_Handbook_Final_2017.pdf), 2018

Statute Assessment: Prepaid Wireless Telecommunications E911 Excise Tax –  
(Title 42, Chapter 5, Article 9) [ARS § 42-5402](#).

Statute Section Reference	Current Assessment	Action Needed
C. For the purpose of determining the location of a retail sale of prepaid wireless telecommunications service under this article, a retail sale of prepaid wireless telecommunications service occurs in this state if:		
1. The retail sale of prepaid wireless telecommunications service is completed in person at a business location in this state.	Meets current needs	No change required.
2. If paragraph 1 of this subsection does not apply, the product is delivered to the consumer at an address in this state.	Lacks clarity. For example, is this to mean physical geographic address? What if the service is purchased or renewed by internet transaction and uploaded digitally to the wireless device?	Seek legal opinion on the interpretation of “address.” If determined to only cover physical geographic address, add text to cover digital transactions and/or renewals of service agreements/transactions.
3. If paragraphs 1 and 2 of this subsection do not apply, the seller's records that are maintained in the ordinary course of business indicate that the consumer's address is located in this state and the seller's records are not made or kept in bad faith.	Meets current needs	No change required.
4. If paragraphs 1, 2 and 3 of this subsection do not apply, the consumer gives the seller an address in this state during the completion of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith.	Meets current needs	No change required.
5. If paragraphs 1 through 4 of this subsection do not apply, the wireless telephone number is associated with a location in this state.	Meets current needs	No change required.
D. The amount of tax that is paid by a seller shall not be included in the tax base for computing any transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, that is	Meets current needs	No change required.

Statute Assessment: Prepaid Wireless Telecommunications E911 Excise Tax –  
(Title 42, Chapter 5, Article 9) [ARS § 42-5402](#).

Statute Section Reference	Current Assessment	Action Needed
imposed by this state, any political subdivision of this state or any intergovernmental agency.		
E. The tax levied under this section shall be the only E911 funding obligation for prepaid wireless telecommunications service in this state. This state, any political subdivision of this state or any intergovernmental agency shall not levy any other similar tax or fee, however denominated, on any seller or consumer for the sale, purchase, use or provision of prepaid wireless telecommunications service for the purpose of funding E911 service.	Meets current needs	No change required.
<b>NEW SECTIONS NEEDED</b>		
None identified		

## Providers of Emergency Services

This section references definitions of “provider” and provides civil liability protection to those providers as defined in statute.

Statute Assessment: Providers of Emergency Services – (Title 12, Chapter 6, Article 12) <a href="#">ARS § 12-713</a> – Providers of Emergency Services: Civil Liability		
Statute Section Reference	Current Assessment	Action Needed
In the provision of 911 services, a person, a provider as defined in Section <a href="#">43-5251</a> or a public entity or any employee of the public entity is not liable for damages in any civil action for injuries, death or loss to a person or property that are incurred by any person with respect to all decisions made and actions or omissions taken that are based on good faith implementation except in the cases of wanton or willful misconduct, regardless of technology platform including a public safety radio communications network, that receives, develops, collects or processes information for the service’s location information databases, relays, transfers, transfers, operates, maintains or provides emergency notification services or systems capabilities, or provides emergency communications or services for ambulances, police and fire department or other public safety entities.	<p>Definition of provider is found in Section 42-5251, not 43-5251 as indicated on the 9-1-1 Program Programs’ website. The link takes one to the correct statute but the reference is incorrect.</p> <p>Please see discussion of “provider” below.</p>	Correct link reference on website.

## Telecommunication Service Excise Tax

This section includes definitions that are used in reference to 9-1-1 service.

Statute Assessment: Telecommunication Service Excise Tax – (9-1-1 Title 42, Chapter 5, Article 6, <a href="#">ARS § 42-5251</a> ) Definitions		
Statute Section Reference	Current Assessment	Action Needed
1. "Customer" means a person or entity in whose name telephone or telecommunication services are rendered, as evidenced by a signature on an application or contract for service or by receipt or payment of bills regularly issued in the person's or entity's name.	This definition does not consider prepaid services whereby a "payment of bills regularly issued" may not be a part of the transaction. A signature may be required by the pre-paid vendor or may not.	Simplify the definition of customer to be all-inclusive of the current situation while enabling expansion to include future technology applications capable of contacting 9-1-1.
2. "Emergency telecommunication services" means telecommunication services or systems that use number 9-1-1 or a similarly designated telephone number for emergency calls.	Meets current needs	No change needed.
3. "Exchange access services" means telephone or telecommunication exchange access lines or channels that provide local access from the premises of a customer to the local telecommunications network to effect the transfer of information.	Legacy terminology; limited to current technology.	Until transition to NG9-1-1 is complete, this definition will need to remain in the statute. At some point in the future when no legacy systems remain, this definition should be removed.
4. "Prepaid wireless telecommunications service" means wireless services that allow a caller to dial 9-1-1 to access the 9-1-1 system under a service that is paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.	Meets current needs	No change required.

Statute Assessment: Telecommunication Service Excise Tax –  
 (9-1-1 Title 42, Chapter 5, Article 6, [ARS § 42-5251](#)) Definitions

Statute Section Reference	Current Assessment	Action Needed
<p>5. "Provider" means any of the following:</p> <p>(a) A public service corporation that offers telephone or telecommunications services pursuant to title 40 and that provides exchange access services.</p> <p>(b) A supplier of wireless services.</p> <p>(c) A supplier of any combination of wire and wireless services.</p>	<p>"Public service corporation" presumes an application and approval from the Public Utilities Commission. This may not be true in the future and certainly does not apply to Internet Protocol (IP)-based service providers.</p>	<p>Conversation with the Public Utilities Commission/Corporation Commission should be initiated. Exploration of the definition of a "public service corporation that offers telecommunications services" should be considered for the NG9-1-1 environment. Advice from PUC/CC staff will be helpful and the 9-1-1 Program understanding of NG9-1-1 services will help both the CCC and the Program determine whether any changes or additional definitions are necessary.</p> <p>Definition of "NG9-1-1 provider" should be added to this section.</p>
<p>6. "Wireless services" means a commercial mobile service, as defined by 47 Code of Federal Regulations section 20.3, as amended.</p>	<p>Meets current needs</p>	<p>No change required.</p>

**NEW DEFINITIONS NEEDED**

<p>Next Generation 9-1-1 Services</p>	<p>"Next Generation 9-1-1 services" means a secure, IP-based, open-standards system comprised of hardware, software, data, and operational policies and procedures that:</p> <p>(A) provides standardized interfaces from emergency call and message services to support emergency communications.</p> <p>(B) processes all types of emergency calls, including voice, text, data, and multimedia information.</p> <p>(C) acquires and integrates additional emergency call data useful to call routing and handling.</p> <p>(D) delivers the emergency calls, messages, and data to the appropriate public safety answering point (PSAP) and other appropriate emergency entities based on the location of the caller.</p> <p>(E) supports data, video, and other communications needs for coordinated incident response and management.</p> <p>(F) interoperates with services and networks used by first responders to facilitate emergency response.</p> <p>REF: Agreed to by NENA, NASNA, iCERT, and National 911 Program representatives on 1/12/2018.</p>
<p>Network Service Provider (NSP)</p>	<p>A network service provider (NSP) is a business entity that provides or sells services such as network access and bandwidth by allowing access into its backbone infrastructure or access to its network access points (NAP), which consequently also means access to the internet. NSPs are very similar to, or can even be considered the same as, internet service providers (ISPs), but in most cases they are the ones providing backbone services to the ISPs.</p> <p><a href="https://www.techopedia.com/definition/27327/network-service-provider-nsp">https://www.techopedia.com/definition/27327/network-service-provider-nsp</a></p>

**NEW DEFINITIONS NEEDED**

<p>Next Generation Core Services (NGCS)</p>	<p>The base set of services needed to process a 9-1-1 call on an ESInet. Includes the ESRP, ECRF, LVF, BCF, Bridging, Policy Store, Logging System and typical IP services such as DNS and DHCP. The term Next Generation Core Services includes the services and not the network on which they operate. See Emergency Services IP Network.</p>
<p>Emergency Services IP Network (ESInet)</p>	<p>An ESInet is a managed IP network that is used for emergency services communications, and which can be shared by all public safety agencies. It provides the IP transport infrastructure upon which independent application platforms and core services can be deployed, including, but not restricted to, those necessary for providing NG9-1-1 services. ESInets may be constructed from a mix of dedicated and shared facilities. ESInets may be interconnected at local, regional, state, federal, national and international levels to form an IP-based inter-network (network of networks). The term ESInet designates the network, not the services that ride on the network. See Next Generation Core Services.</p>

## Telecommunication Service Excise Tax

This section discusses the 9-1-1 fee amount and how the fee is to be applied.

Statute Assessment: Telecommunication Service Excise Tax – (9-1-1 Title 42, Chapter 5, Article 6, <a href="#">ARS § 42-5252</a> ) – Levy of tax; applicability		
Statute Section Reference	Current Assessment	Action Needed
A. A tax is levied on every provider in an amount as follows:		
1. For the fiscal years beginning from and after June 30, 2001 and ending before July 1, 2006, thirty-seven cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.	Historical reference.	No change.
2. For fiscal year 2006-2007, twenty-eight cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.	Historical reference.	No change.
3. For the fiscal years beginning from and after June 30, 2007, twenty cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.	Historical reference.	See Funding section of this report. If it is determined that the amount of funding should change, a new section should be added to indicate the new fee going forward.
B. A tax is levied on every public service corporation at the rate of 1.1 per cent of the public service corporations' gross proceeds of sales or gross income derived from the business of providing exchange access services. Revenues from the tax shall be used for the purpose of financing telecommunication devices for the deaf and the severely hearing and speech impaired under the program established pursuant to section 36-1947. For the purposes of this subsection, "public service corporation" means a public service corporation that offers telephone or		See Funding section of this report. If it is determined that the amount of funding should change, a new section should be added to indicate the new fee going forward.

Statute Assessment: Telecommunication Service Excise Tax –  
(9-1-1 Title 42, Chapter 5, Article 6, [ARS § 42-5252](#)) – Levy of tax; applicability

Statute Section Reference	Current Assessment	Action Needed
telecommunications services pursuant to title 40 and that provides exchange access services.		
C. Each provider shall state on the invoice to customers a separate line item stating the amount of tax levied pursuant to subsections A and B of this section.	Meets current needs	No change.
D. Unless the context otherwise requires, article 1 of this chapter governs the administration of the tax imposed under this section	Meets current needs	No change.
E. The tax levied under this section does not apply to prepaid wireless telecommunications service.	Meets current needs	No change.
<b>NEW SECTION NEEDED</b>		
As recommended in the Funding Section of the report, the statute should clarify eligible uses of funding and should be expanded to include NG9-1-1 elements such as geographic information system (GIS) mapping software used for 9-1-1 call processing and dispatch, NGCS, cybersecurity initiatives, data storage requirements, etc.		
All interest earned on fund investment also should be allocated to the 9-1-1 Fund for use specifically for 9-1-1 service, the Arizona 9-1-1 Program and PSAP support, but for no other purpose. Strengthen protection language. The governing body should keep records identifying critical remittance information.		
Clarify funding of tribal and federal PSAPs in either statute or policy.		

## Appendix E – Policy Recommendations

Responsibility of the 9-1-1 Program as Outlined in Statute or Code:	Policy Direction
Title 2, Administration, Chapter 1, Article 4, R2-1-401_R2-1-411	
Create a service plan template	<p>Create a service plan template that will include the elements that are needed to align with ARS requirements. Also identify what the Program would like to see collected on a statewide basis to build a profile for each PSAP jurisdiction, and therefore a statewide view of 9-1-1 service in Arizona.</p> <p>Once the service plan template is developed, create a process for submitting and updating service plans annually. Requirements and the revised template should be communicated with local 9-1-1 authorities.</p>
The assistant director receives submission of the service plan	Develop a checklist of items required in the service plan to ensure that all elements are provided at the time of submission.
The assistant director shall approve or disapprove a service plan within 60 days of its submission	There should be a written policy describing the criteria that the assistant director will use to approve or disapprove the service plan. The policy should include a requirement for the assistant director to document the analysis based on the written criteria, and a method for tracking the submission and meeting the stated notification timeline in the Administrative Code.
If the plan is approved, the assistant director shall notify the 9-1-1 planning committee chairperson in writing	Establish a process for notification of service plan approvals; notifications should itemize costs that are eligible for payment from the 9-1-1 fund.
If a plan or any part of the plan is not approved, the assistant director shall notify the 9-1-1 planning committee chairperson.	Initiate a process for notification to the local 9-1-1 planning committee. The process should ensure that notification is made within 60 days of plan submission and should include the reasons for disapproval and an invitation to resubmit a revised service plan.
By December 15 of each year, a 9-1-1 planning committee with an approved service plan shall submit a budget of projected 9-1-1 costs to the assistant director for the next fiscal year.	Develop a process to notify the 9-1-1 planning committee with an approved service plan to submit a budget of projected costs for the next fiscal year.

Responsibility of the 9-1-1 Program as Outlined in Statute or Code:	Policy Direction
The assistant director shall approve or disapprove the revised service plan within 30 days following receipt.	Establish a schedule for reviewing resubmitted service plans within 30 days following receipt of the revision.
The assistant director shall review invoices for compliance with the original Certificate of 9-1-1 Service Plan Approval, and approve and make payment directly to the operating telephone company upon verification that the invoice is in compliance.	Create a policy to review invoices for compliance with the approved service plan and authorize payment directly to the vendor upon verification that the invoice complies with the original service plan.
Payment of costs for ongoing maintenance shall be made by the 9-1-1 Program regarding customer premises equipment (CPE) following expiration of a warranty period for the equipment. Payment shall be made after a copy of the maintenance contract, with an itemized list of hourly labor rates and equipment costs, has been submitted to the Program.	Develop a policy for keeping track of warranty-period expirations and for authorizing payment upon submission of an itemized list of hourly labor rates and equipment costs.
The assistant director shall make payment directly to the vendor upon verification that the charges are for 9-1-1 equipment and services that originally were contracted, and that the vendor's hourly labor rate does not exceed the prevailing labor rate for similar communication equipment and services.	<p>To bring the Program into compliance with state fiscal rules and to streamline payments to vendors, leverage the State's eCivis Grant Portal for 9-1-1 system administrators to submit invoices for approval. Once approached by the Program, funds are distributed to the 9-1-1 system administrator for payment.</p> <p>Establish a process to verify that the charges are for 9-1-1 equipment and services that originally were contracted, and that the vendor's hourly labor rate does not exceed the prevailing labor rate for similar communication equipment and services.</p>
The assistant director shall pay the costs for consulting directly with the consultant.	<p>Develop a policy that outlines how the assistant director will verify that:</p> <ol style="list-style-type: none"> <li>1. The need and proposed cost of consulting services is identified in either the original 9-1-1 service plan under R2-1-403 or in the annual budget under R2-1-404(D)</li> <li>2. A copy of the consultant's contract was submitted to the assistant director.</li> </ol>

Responsibility of the 9-1-1 Program as Outlined in Statute or Code:	Policy Direction
<p>The assistant director shall request from the operating telephone companies providing 9-1-1 service, by February 15 of each year, the number and type of exchange access lines in each telephone exchange area in Arizona and the amount of 9-1-1 excise tax generated in each telephone exchange area in each county.</p> <p>The assistant director shall request, by February 15 of each year, from each wireless service provider, the number of activated wireless service lines within Arizona and the amount of 9-1-1 tax generated.</p>	<p>Develop a policy and process to direct the necessary steps to fulfill the requirement of this activity. The process should include a template to ensure consistent data collection.</p>
<p>Each 9-1-1 planning committee that has a Certificate of 9-1-1 Service Plan Approval shall be apportioned a percentage of monies on deposit in the 9-1-1 fund. Payment shall be made directly to the vendors identified in the 9-1-1 service plan.</p>	<p>Establish a formula that will determine how the apportionment will be executed. This formula should be written, detailed and explained, and templates should be developed that provide clear documentation on the process used.</p>
<p>If the combined statewide 9-1-1 service costs exceed the available monies in the fund, monies shall be allocated by the assistant director on a percentage basis determined by the ratio of revenue to expenses for the entire state.</p>	<p>Establish a process for allocating additional revenues to be based on the revenue-to-expense ratio on a statewide basis. This process should also be written, detailed and explained, and templates should be developed that provide clear documentation on the process used.</p>

Revised Statutes §41-704 – Emergency telecommunication services; administration; revolving fund

A – The director of the Department of Administration shall:

1. Adopt rules and procedures for administering and disbursing monies deposited in the emergency telecommunication services revolving fund, and at least quarterly shall review and approve requests by political subdivisions of this state for payment for operating emergency telecommunication service systems.

Review current procedures for administering the fund and for disbursing monies in the fund; ensure compatibility with statute and rules; include written instructions for distribution, including any calculations or documentation for records clarity; establish a quarterly review process for fund requests including documenting their receipt by the Program and the application of established review criteria.

2. In fiscal year 2001-2002 and every two years thereafter, recommend to the legislature the amount of the telecommunication services excise tax that will be required during the following two fiscal years for purposes of this section, with supporting documentation and information.

Update the process for determining the amount needed for funding projects and local support. Updated strategic planning is essential for this activity.

3. The legislature shall review the recommendation and take legislative action regarding the recommendation.

Responsibility of the 9-1-1 Program as Outlined in Statute or Code:	Policy Direction
<p>B – An emergency telecommunication services revolving fund is established to be administered by the director. The fund shall be used for:</p> <ol style="list-style-type: none"> <li>1. Necessary or appropriate equipment or service for implementing and operating emergency telecommunication services through political subdivisions of this state. Priority shall be given to establishing emergency telecommunication services in those areas of the state that are without emergency telecommunication services.</li> </ol>	<p>When establishing funding criteria, prioritize the distribution formulas to areas most in need of 9-1-1 service support. Ensure that this priority setting has stakeholder input and is documented.</p>
<ol style="list-style-type: none"> <li>2. Necessary or appropriate administrative costs or fees for consultants' services, not to exceed 3 percent of the amounts deposited annually in the revolving fund. For fiscal years beginning after June 30, 2001, the department may use up to two-thirds of 3 percent of the amounts deposited annually in the revolving fund for administrative costs. The remainder of the 3 percent may be allocated for local network management of contracts with public safety answering points for emergency telecommunication services.</li> </ol>	<p>Establish a process for determining how much of the 9-1-1 fund is used for fees, consultant services, and administrative costs to ensure it does not exceed the legislative threshold. Document this process and the analysis results.</p>
<ol style="list-style-type: none"> <li>3. Monthly recurring costs of emergency telecommunication services, including expenditures for capital, maintenance and operation purposes.</li> </ol>	<p>If not already in place, develop a tracking mechanism to document anticipated and budgeted expenditures for services, approved capital costs, maintenance costs and operations costs, to be updated with every distribution.</p>

Responsibility of the 9-1-1 Program as Outlined in Statute or Code:	Policy Direction
<p>4. A wireless carrier's costs associated with the provision, development, design, construction and maintenance of the wireless emergency telecommunication services in an amount that the wireless carrier has not recovered through the deduction mechanism specified in federal law.</p>	<p>If the statute is not changed to eliminate this requirement, ensure that there is a process for receiving documentation from the wireless carrier that it has not recovered costs through its own methods and that requests for reimbursement are consistent with statute requirements.</p>
<p>C. At the end of each fiscal year, any unexpended monies in the fund, including interest, shall be carried over and do not revert to the general fund but shall be applied to the extent possible to reduce the levy under section 42-5252, subsection A for the following fiscal year.</p>	<p>If not already a process, and if the statute is not modified, develop a tracking mechanism to document the unexpended funds, including the interest on the funds, that are being applied each year to levy reduction.</p>

## Appendix F – Stakeholder Findings and Observations

### Stakeholder Feedback

The input collected during the 18 stakeholder interviews provided valuable information and unique insights about how the stakeholders perceive the 9-1-1 Program on a variety of topics. The level of stakeholder candor and the amount of detail provided enabled MCP to articulate the findings and observations that follow.

When asked to describe the 9-1-1 Program using a few words, interviewees shared the following:

Can you share a few words that describe the AZ 9-1-1 Program?	
Helpful	Difficult
Accessible, responsive, reliable	Disconnected
Engaged and involved	Combative
Caring	Broken
Innovative	Stale and stagnant (but well-intentioned)
Crucial, important, integral	Bureaucrats
Resource for information and guidance	Outdated
“Gate Keepers”/“Captain of 9-1-1 Ship”	
Experienced	
Cohesive	
Strong relationships	

Although very subjective, participants were asked to assign a letter grade to the 9-1-1 Program’s performance. Grades varied by PSAP.

If you had to assign a letter grade to the performance of the 9-1-1 Program, what would it be?				
A	B	C	D	F
39%	22%	22%	11%	6%

The higher grades reflected the satisfaction some PSAPs expressed about the “innovative managed services rollout” and the support that PSAPs have received. The lower grades reflected a desire for the 9-1-1 Program to embrace rather than compete with the Maricopa region, and to establish a clear NG9-1-1 vision and strategy shaped by stakeholder input.

When asked if interviewees understood and agreed with the 9-1-1 Program’s vision for NG9-1-1, opinions were again diverse across the spectrum of PSAP stakeholders (e.g., funded, unfunded, tribal, Maricopa region). Comments ranged from, “Wonderful job with Next Generation; we’re the first state to make that work,” to “What vision?” Most stakeholders (54 percent) either did not know the 9-1-1 Program’s vision or they weren’t certain how they felt about it. Even within the 46 percent of interviewees who said they did understand the vision, they could not articulate it other than to mention that the managed services solution was the vision. Many left the impression that they weren’t particularly connected to the vision and appeared complacent about it. One interviewee said, “Not much detail has been provided other than ‘we are going this way.’”

Do you know and agree with the 9-1-1 Program’s vision for NG9-1-1?		
Yes	No	Unsure
46%	39%	15%

Because a strong vision usually guides strong initiatives, MCP asked stakeholders whether the 9-1-1 Program was focused on the right initiatives and whether it was properly staffed to execute on those initiatives. Again, opinions varied based on stakeholder group. The majority agreed that the 9-1-1 Program was focused on the right initiatives. Those who did not agree or were unsure said that they struggled to or could not answer the question because they had a difficult time pinpointing the 9-1-1 Program’s initiatives.

Is the 9-1-1 Program focused on the right initiatives?	
Yes	No / Unsure
64%	36%

The overwhelming majority of interviewees felt that the 9-1-1 Program needs more staff or said they were unsure of whether the Program was understaffed—primarily because they didn’t understand the Program’s initiatives. Of the 58 percent of interviewees who believe the Program needs additional staff, many suggested that four staff members seemed ideal to ensure that local PSAPs received the support they need. One individual who expressed that current staffing was insufficient said the Program is “being held together with duct tape and WD-40.”

Do you feel there is adequate 9-1-1 Program staff to carry out program initiatives?		
Yes	No, Need More	Unsure
17%	58%	25%

While the 9-1-1 community in Arizona has varied opinions about the performance of the 9-1-1 Program, all interviewees agree on the importance of NG9-1-1 and implementing specific technologies soon. Feedback suggests that the preferred technologies to implement in the next two years include text-to-9-1-1 and improved location accuracy. Mapping and replacement of the Master Street Address Guide (MSAG) with GIS data also were mentioned several times.

**Stakeholder Interview Themes**

Through the interview process, some topics came up often as themes. Those themes are identified below, along with supporting thoughts captured through the interviews.

Theme	Feedback
9-1-1 Program Effectiveness	The 9-1-1 Program was recognized for its knowledge, support, communication, and responsiveness. A desire for more stakeholder engagement to help increase effectiveness also was expressed.
Funding	Many stakeholders shared common opinions seeking 1) transparency around how funding decisions are made and who receives funding; 2) more funding; and 3) input into the decision-making process.

Theme	Feedback
Staffing	The general feedback from stakeholder interviews was concern about staffing levels indicating they are too low to support the needs of the PSAPs and responsibilities of the 9-1-1 Program.
Strategic Planning	Across many interviews, there was a distinct desire for a clear vision and strategic plan. Many stakeholders expressed a desire for PSAPs to play a role in developing the strategic plan.
Communications	While many interviewees felt communicated with frequently and expressed that the 9-1-1 Program communicated about the right things, others expressed a need for more communication and information. Some expressed a desire to have more statewide meetings for the chance to come together as a larger group to exchange ideas and learn from each other.
Transition to Grants Office	While some PSAPs are hopeful and see the transition to the Grants Office as a refreshing change, many others are wary.
Desired Local Support	Interviewees identified what they wished the 9-1-1 Program would do. Additional support that would be helpful to their individual PSAPs and would improve 9-1-1 service in Arizona includes: funding, technology support, collaborative planning and outreach, and additional training.
Managed Services Solution	The managed services solution was raised by numerous stakeholders and was seen both as a success and a challenge. Many have benefited from the solution, while others feel that the solution does not meet the needs of their region.

## SWOT Analysis

Depicted below is a summary of the current state of the 9-1-1 Program from the stakeholder perspective, displayed as a SWOT<sup>46</sup> diagram.



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<sup>46</sup> SWOT is an acronym that stands for Strengths, Weaknesses, Opportunities, and Threats. Strengths describe the positive attributes internal to an organization; these are within an organization's control. Weaknesses describe the negative factors that detract from an organization's value; these areas require enhancement to be competitive. Opportunities are external, positive factors from which an organization may benefit. Threats are external, negative factors beyond an organization's control.

## Appendix G – Glossary of Terms

Term	Definition
Administrative phone system	Typically, a multiline telephone system used for administrative calls and outgoing calls in the PSAP environment. These systems are separate from and should not be confused with the call-handling equipment (i.e., the 9-1-1 phone system).
Arizona Department of Administration (ADOA)	The ADOA provides government services to the people of Arizona by enabling government agencies to operate efficiently and effectively through the delivery of quality support services.
Association of Public Safety Communications Officials (APCO)	APCO is the world's oldest and largest not-for-profit professional organization dedicated to the enhancement of public safety communications.
Automatic Location Identification (ALI)	The automatic display at the PSAP of the caller's address/location of the telephone and supplementary emergency services information of the location from which a call originates.
Border Control Function (BCF)	Provides a secure entry into the ESInet for emergency calls presented to the network. The BCF incorporates firewall, admission control, and may include anchoring of session and media as well as other security mechanisms to prevent deliberate or malicious attacks on PSAPs or other entities connected to the ESInet.
Bridging	Connecting two or more parties with a conference bridge.
Computer Aided Dispatch (CAD)	A computer-based system, which aids PSAP telecommunicators by automating selected dispatching and record-keeping activities.
Core Service	A specific and essential function within the 9-1-1 industry. Examples of core functions are call routing, call processing, call dispatching, and logging.
Customer Premises Equipment (CPE)	Communications or terminal equipment located in the customer's facilities. (The 9-1-1 telephone equipment at the PSAP.)
Database	A collection of information that is organized, and typically computerized, so that it can be easily accessed, managed, and updated.
Dynamic Host Configuration Protocol (DHCP)	A configuration protocol that allows a host to acquire configuration information from a visited network and an IP address.

Term	Definition
Domain Name System (DNS)	A globally distributed database for the resolution of host names to numeric IP addresses.
Emergency Call Routing Function (ECRF)	A functional element in an ESInet where location information (either civic address or geo-coordinates) is used to route an emergency call toward the appropriate PSAP for the caller's location or towards a responder agency.
Emergency Medical Dispatch (EMD)	Refers to a system that enhances services provided by the PSAP telecommunicators by allowing the 9-1-1 Specialist to quickly narrow down the caller's type of medical or trauma situation, to better dispatch emergency services and provide quality instruction to the caller before help arrives.
Emergency Notification System (ENS)	General category for any systems used to notify persons/public of an emergency. May include changeable message signs, sirens, telephone and other media.
Emergency Service Internet-Protocol Network (ESInet)	An IP-based network dedicated for the use of public safety operations. An ESInet can route 9-1-1 calls to a PSAP and support other methods of data-sharing between public safety agencies. An ESInet cannot be proprietary to a specific core service product or group of products.
Emergency Services Routing Proxy (ESRP)	An i3 functional element which is a SIP proxy server that selects the next hop routing within the ESInet based on location and policy.
Geographic Information System (GIS)	A system for capturing, storing, displaying, analyzing and managing data and associated attributes which are spatially referenced.
Geospatial	Relating to, occupying, or having the character of space, denoting data that is associated with a particular location. Geographic Information Systems store spatial data in regional databases.
Grants and Federal Resources (GFR)	The GFR is a coordinating agency of the Arizona Department of Administration. GFR helps state agencies, local governments, and non-profit organizations find, win and manage grants. GFR strives to be the premier resource of training and technical assistance for the Arizona grants community.
Local Exchange Carrier (LEC)	A telephone company that provides the local exchange telephone services.

Term	Definition
Logging System	A device that records, stores and plays back all communication media within the PSAP. Media can include—but are not limited to—voice, radio, text and network elements involved with routing a 9-1-1 call. Logging recorders should be able to simultaneously record from several sources.
Location Validation Function (LVF)	A functional element in an NGCS where civic location information is validated against the authoritative GIS database information.
Master Street Address Guide (MSAG)	A database of street names and house number ranges within their associated communities defining Emergency Service Zones (ESZs) and their associated Emergency Service Numbers (ESNs) to enable proper routing of 9-1-1 calls.
National Emergency Number Association (NENA)	The National Emergency Number Association is a not-for-profit corporation established in 1982 to further the goal of “One Nation-One Number.” NENA is a networking source and promotes research, planning and training. NENA strives to educate, set standards and provide certification programs, legislative representation and technical assistance for implementing and managing 9-1-1 systems.
Next Generation 9-1-1 (NG9-1-1)	An Internet Protocol (IP)-based system comprised of managed Emergency Services IP networks (ESInets), functional elements (applications), and databases that replicate traditional E9-1-1 features and functions and provides additional capabilities. NG9-1-1 is designed to provide access to emergency services from all connected communications sources, and provide multimedia data capabilities for Public Safety Answering Points (PSAPs) and other emergency service organizations.
Next Generation 9-1-1 Core Services (NGCS)	The base set of services needed to process a 9-1-1 call on an ESInet. Includes the ESRP, ECRF, LVF, BCF, Bridge, Policy Store, Logging Services and typical IP services such as DNS and DHCP. The term NG9-1-1 Core Services includes the services and not the network on which they operate. See Emergency Services IP Network.
Policy Store	A functional element in the ESInet that stores policy documents/rules.
Public Safety Answering Point (PSAP)	An entity responsible for receiving 9-1-1 calls and processing those calls according to a specific operational policy.

Term	Definition
Records Management System (RMS)	The management of records for an organization throughout the record's life cycle. The activities in this management include the systematic and efficient control of the creation, maintenance, and destruction of the records along with the business transactions associated with them.
Secondary PSAP	A PSAP to which 9-1-1 calls are transferred from a Primary PSAP. A secondary PSAP is typically established to handle a specific subset of emergency traffic (e.g. – EMS and fire incidents).
Selective Router	An interfacing device located in a Central Office that routes the 9-1-1 calls to the appropriate PSAP based on the caller's location information.
Telecommunicators	Person employed by a PSAP that answers incoming emergency telephone calls and with NG911 will be asked to manage emergency requests for service via text, video, and voice. They provide the appropriate emergency response either directly or through communication with the appropriate entities.
Teletypewriter / Telecommunications Device for the Deaf (TTY/TDD)	A teleprinter, an electronic device for text communication over a telephone line that is designed for use by persons with hearing or speech difficulties.
Transmission Control Protocol/Internet Protocol (TCP/IP)	A protocol for communication between computers; also used as a standard for transmitting data over networks
Trunk	Typically, a communication path between central office switches, or between the 9-1-1 Control Office and the PSAP.
Voice Over Internet Protocol (VoIP)	An IP telephony term for a set of facilities used to manage the delivery of voice information over the Internet.

**TITLE 2. ADMINISTRATION**  
**CHAPTER 1. DEPARTMENT OF ADMINISTRATION**  
**Supplement 18-1**

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, through March 31, 2018.

**Questions about these rules? Contact:**

Department: Department of Administration  
Name: Karen Ziegler, Project Manager, AZPSBN  
Address: 100 N. 15th Ave., Suite 305  
Phoenix, AZ 85007  
Telephone: (602) 542-6032  
E-mail: [Karen.ziegler@azdoa.gov](mailto:Karen.ziegler@azdoa.gov)  
Website: [www.doa.az.gov](http://www.doa.az.gov)

**TITLE 2. ADMINISTRATION**  
**ARTICLE 4. EMERGENCY TELECOMMUNICATION SERVICES REVOLVING FUND**

*Article 4 consisting of Sections R2-1-401 through R2-1-409 adopted effective June 22, 1985.*

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**ARTICLE 4. EMERGENCY TELECOMMUNICATION SERVICES REVOLVING FUND**

**R2-1-401. Definitions**

The following definitions shall apply for purposes of this Article:

1. "Assistant Director" means Assistant Director of the Information Services Division of the Arizona Department of Administration.
2. "Automatic location identification" or "ALI" means the process of electronically identifying and displaying the name of the subscriber and the address of the calling telephone number to a person answering a 9-1-1 call.
3. "Automatic number identification" or "ANI" means the telephone number of a caller that is automatically identified at the PSAP receiving a 9-1-1 call.
4. "Basic 9-1-1" means a service that routes a 9-1-1 call to a PSAP for dispatch services. There are no ALI or ANI data provided with the call.
5. "Busy hour" means the hour period during a 24-hour day when the number of 9-1-1 calls to the PSAP is generally at a maximum.
6. "Busy month" means the one-month period during a 12-month calendar year when, as a general matter, the number of 9-1-1 calls to the PSAP is at a maximum.
7. "Central office" means the physical site of the switching equipment for a specific telephone exchange area.
8. "Customer premise equipment" or CPE means the PSAP's communication equipment necessary for handling 9-1-1 calls.
9. "Dedicated 9-1-1 trunk" means a telephone circuit that is used exclusively to transport 9-1-1 calls.
10. "Enhanced 9-1-1" means a service that routes a 9-1-1 call to a PSAP for dispatch services and delivers the telephone number, name, and address to the PSAP.
11. "Fund" means the emergency telecommunication services revolving fund established in A.R.S. § 41-704(B).
12. "Network access mileage computations" means a computation based on distance measured from the Central Office located outside of the local exchange area to the Central Office that serves the PSAP based on the type of circuits between the Central Offices.
13. "Network exchange services" means telephone circuits or private lines dedicated to and used exclusively for the purpose of receiving, extending, or transferring 9-1-1 calls.
14. "Nine-One-One service" or "9-1-1 service" means a telephone service which allows a user of the public telephone system to reach a PSAP by dialing the digits 9-1-1.
15. "Person" has the same meaning as at A.R.S. § 1-215.
16. "Public or Private safety agency" means any unit of local, state, or federal government, special purpose district, or private person located in whole or in part within this state, that provides or has the authority to provide firefighting, law enforcement, ambulance, or other emergency or medical services.
17. "Public safety answering point" or "PSAP" means a communications facility operated on a 24-hour basis that is assigned the responsibility to receive 9-1-1 calls and, as appropriate, notifies or dispatches public or private safety services or extends, transfers,

- or relays 9-1-1 calls to an appropriate public or private safety agency.
18. "Public safety answering point manager" means a person responsible for the daily operation of a public safety answering point.
  19. "PSAP service area" means the area in which an emergency-call-taking service is provided by a PSAP.
  20. "Selective routing" means a process through which a 9-1-1 call is automatically routed to a predetermined PSAP based on the telephone number of the calling party.
  21. "Service plan" means a written plan which identifies the method of providing and maintaining 9-1-1 Service in a specific geographic area.
  22. "Telephone exchange area" means a specific geographic area designated by the Arizona Corporation Commission to receive service from 1 or more central offices.
  23. "Wireless service" means mobile or cellular telephone service, whether digital or analog.

**Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

**R2-1-402. Establishment of 9-1-1 Planning Committee**

- A. To qualify for funding under A.R.S. § 41-704(B), all the public or private safety agencies in a specific geographic area to be served shall establish a 9-1-1 planning committee to develop a service plan.
- B. A 9-1-1 planning committee shall include representation from all public and private safety agencies located within the specific geographic area that have the authority to provide firefighting, law enforcement, ambulance, or other medical or emergency services.
- C. To receive funding, a 9-1-1 planning committee shall submit a service plan as required in R2-1-403.

**Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

**R2-1-403. Submission of Service Plan**

Each 9-1-1 planning committee shall submit a final service plan to the Assistant Director. The following information shall be included:

1. The name and mailing address of the planning committee chairperson;
2. The names of all members of the 9-1-1 planning committee;
3. The date the service plan is submitted to the Assistant Director;
4. The date the 9-1-1 service is scheduled to begin;
5. The signature of the chairperson;
6. A map showing the geographic boundaries of the telephone exchange areas included in the proposed 9-1-1 service system, each PSAP location, and any other jurisdictional boundaries;
7. The name and mailing address of the public or private safety agency operating each PSAP;
8. The name and telephone number of each PSAP manager;
9. A description of the procedures and agreements to be followed when responding to 9-1-1 calls that are routed to a PSAP other than the one serving the area from which the call originates;
10. A description of the 9-1-1 system routing and switching configurations;
11. A description of the network exchange services, the central office equipment to be used, and any network access mileage computations;
12. An itemized list of both estimated installation cost and ongoing costs as discussed in R2-1-409 for proposed telephone service and equipment. These estimates shall be obtained by the 9-1-1 planning committee from the telephone company serving the telephone exchange area and signed by an authorized employee of the telephone company or equipment vendor. Equipment that is on term contract from the State of Arizona Purchasing Office is exempt from bidding requirements;
13. A copy of the equipment specifications used for bidding the system customer premise equipment. A minimum of 2 bids is required;
14. A copy of the low-bid response with itemized equipment costs and associated installation charges and a list of vendors;
15. A certification from the 9-1-1 planning committee that the service plan meets the requirements of the public or private safety agencies whose services will be available in response to a 9-1-1 call;
16. A list of all public and private safety agencies whose services will be available in response to 9-1-1 calls with the following information about each:
  - a. Agency name,
  - b. Agency mailing address,
  - c. Name and telephone number of the agency head,
  - d. A brief description of the services to be provided, and
  - e. A description of proposed procedures for dispatching emergency service providers;
17. A description of an alternate method of providing service if there is a failure of all or a portion of the 9-1-1 service system or a failure of the PSAP primary electrical power;
18. A certification from the 9-1-1 planning committee for the ALI feature, that at least 90% of the 9-1-1 service area is addressed with street numbers. Before implementation of the ALI feature, certification of a less than 10% error rate in the data base shall be obtained from the telephone company responsible for the data base; and
19. A plan for a program of public information regarding 9-1-1 service, which the 9-1-1 planning committee chairperson or designee will implement at least 30 days before 9-1-1 service begins.

**Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

**R2-1-404. Certificate of Service Plan Approval**

- A. The Assistant Director shall approve or disapprove a service plan within 60 days of its submission.
- B. If approved, the Assistant Director shall notify the 9-1-1 planning committee chairperson in writing of the approval of the service plan and shall include an itemization of the costs that are eligible for payment from the fund. This approval shall be in the form of a "Certificate of 9-1-1 Service Plan Approval".
- C. If a service plan or any part of a service plan is disapproved, the Assistant Director shall notify the 9-1-1 planning committee chairperson in writing within 60 days of the reasons for the disapproval and the opportunity to submit a revised service plan.
- D. By the 15th of December of each year, a 9-1-1 planning committee with an approved service plan shall submit a budget of projected 9-1-1 costs to the Assistant Director for the next fiscal year.

#### **Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

#### **R2-1-405. Resubmitting of a Service Plan**

If a service plan or any part of a service plan is disapproved by the Assistant Director, a revised service plan may be resubmitted by the 9-1-1 planning committee chairperson within 45 days of receipt of the notice of disapproval. The Assistant Director shall approve or disapprove the revised service plan within 30 days following receipt.

#### **Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

#### **R2-1-406. Modification of an Approved Service Plan**

- A. The Assistant Director shall be notified in writing by the 9-1-1 planning committee chairperson at least 60 days in advance of any proposed modification to a 9-1-1 system that would result in a material change to the service plan as approved.
- B. Within 30 days of receipt of any proposed modification, the Assistant Director shall approve or disapprove the proposed modification. If the proposed modification is disapproved, the proposed modification is ineligible for payment from the fund.
- C. The PSAP manager shall review PSAP and network services annually and submit any proposed modification in annual budget request by December 15th of the year preceding the fiscal year in which the modification is proposed to be made.

#### **Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

#### **R2-1-407. 9-1-1 System Design Standards**

In order to obtain approval of a service plan, the 9-1-1 planning committee shall include the following in the service plan:

1. A 9-1-1 service system shall be designed and operated to provide service that enables no more than 1 call out of 100 incoming calls to receive a busy signal on the first dialing attempt during the busy hour of an average week during the busy month;
2. Each telephone position with the capability of answering or handling 9-1-1 calls shall be equipped with the necessary interface to communicate with TDD/TTY devices for communications with hearing-impaired individuals in accordance with the Americans with Disabilities Act;
3. A 9-1-1 service system shall include the following services:
  - a. Law enforcement services including services of the County Sheriff and the Department of Public Safety;
  - b. Firefighting services; and
  - c. Ambulance or emergency medical services;
4. Other services may be included in a 9-1-1 service system at the discretion of the public or private safety agency operating the PSAP, but the fund shall not pay for these other services;
5. PSAP answering equipment shall permit answering personnel to place a 9-1-1 call on hold;
6. Each PSAP and each participating public or private safety agency shall have at least 1 published telephone number to call for non-emergency services. One non-emergency number may be shared by 2 or more participating public or private safety agencies if there is a cooperative agreement for call-answering responsibility; and
7. An automatic alarm system or other related device shall not be connected in a manner that activates a call to a 9-1-1 service system.

#### **Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

#### **R2-1-408. 9-1-1 Operational Requirements**

In order to obtain approval from the Assistant Director for payment from the fund for costs eligible for payment under R2-1-409, the PSAP shall:

1. Monitor the 9-1-1 service system level of service to ensure that the standards in R2-1-407 are met. Once each fiscal year the PSAP manager shall obtain a report regarding the 9-1-1 level of service from the telephone company servicing the telephone exchange area. If the report provided by the telephone company indicates that the required service level is not being met, the PSAP manager shall:
  - a. Request the telephone company to prepare plans, specifications, and cost estimates to raise the level of service to that required in R2-1-407.
  - b. Notify the Assistant Director under R2-1-406 if, based on information provided by the telephone company, modifications to the system are necessary.
2. Provide service to all callers within its service area 24 hours each day, 7 days a week. To qualify as a primary or secondary PSAP, the PSAP must receive a minimum of 300 9-1-1 emergency calls per month.
3. Refer all calls entering the 9-1-1 service system that do not require a public or private safety response unit be dispatched to a non-9-1-1 telephone number.
4. Designate a telephone number other than 9-1-1 as a backup number in case the 9-1-1 service system fails. The designated alternate telephone number shall be published in the public telephone directory, by the local public safety agency.
5. Develop and maintain a system for recording 9-1-1 calls received by the PSAP. The records shall be retained for at least 31 days from the date of the call and shall include the following information:
  - a. Date and time the call is received,
  - b. Nature of the problem, and
  - c. Action taken by the dispatcher.
6. To qualify as a remote print site, the PSAP must receive a minimum of 100 emergency calls per month.

#### **Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

#### **R2-1-409. Funding Eligibility**

A. The following costs of providing 9-1-1 service shall be reimbursed by the ADOA 9-1-1 Office from the fund, subject to available monies and the following requirements, to a 9-1-1 planning committee that has a Certificate of 9-1-1 Service Plan Approval:

1. Costs of the network exchange services necessary to provide the minimum grade of service.
2. Costs for necessary and appropriate equipment required by the PSAP to receive and process 9-1-1 calls and messages. This

may include computer telephone integrated systems or other automated call management and distribution systems.

3. Ongoing maintenance costs following the warranty period, if any, for the customer premise equipment used in the receiving and processing of 9-1-1 calls and messages.
  4. Necessary and appropriate consulting services or administrative costs, not to exceed 3% of the amounts deposited annually in the revolving fund.
- B.** The Assistant Director shall consider special projects that further statewide 9-1-1 availability, including addressing or database projects, public education, and training programs on a case-by-case basis. Special project funding is based on community needs and the availability of funds.

**Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

**R2-1-410. Method of Reimbursement**

- A.** Network Exchange Services
1. The 9-1-1 planning committee chairperson shall submit the operating telephone company's billing statement for the network exchange services to the Assistant Director.
  2. The Assistant Director shall review invoices for compliance with the original Certificate of 9-1-1 Service Plan Approval, and approve and make payment directly to the operating telephone company.
- B.** Station terminal equipment
1. Payment of costs for the 9-1-1 customer premise equipment shall be made after submission by the designated public safety office, of a copy of the vendor's contract, with an itemized listing of equipment and associated costs and installation charges, to the Assistant Director for review and approval.
  2. The Assistant Director shall make payment directly to the vendor upon verification that the invoice is in compliance with the original Certificate of 9-1-1 Service Plan Approval.
- C.** Maintenance costs
1. Payment of costs for ongoing maintenance shall be made by the ADOA 9-1-1 Office of customer premise equipment following expiration of a warranty period for the equipment. Payment shall be made by the designated public safety office submitting a copy of the maintenance contract with an itemized list of hourly labor rates and equipment costs.
  2. The Assistant Director shall make payment directly to the vendor upon verification that the charges are for the 9-1-1 equipment and services originally contracted for and that the vendor's hourly labor rate does not exceed the prevailing labor rate for similar communication equipment and services.
- D.** The Assistant Director shall pay the costs for consulting directly to the consultant, after the Assistant Director verifies that:
1. The need and proposed cost of consulting services is identified in either the original 9-1-1 service plan under R2-1-403 or in the annual budget under R2-1-404(D); and
  2. A copy of the consultant's contract is submitted to the Assistant Director.

**Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

**R2-1-411. Allocation of Funds**

The following change access and wireless service line verification shall be conducted by the ADOA 9-1-1 Office each year:

1. The Assistant Director shall request from the operating telephone companies providing 9-1-1 service, by February 15 of each year, the number and type of exchange access lines in each telephone exchange area in this state and the amount of 9-1-1 excise tax generated in each telephone exchange area in each county.
2. The Assistant Director shall request, by February 15 of each year, from each wireless service provider the number of activated wireless service lines within the state and the amount of 9-1-1 tax generated.
3. Each 9-1-1 planning committee that has a Certificate of 9-1-1 Service Plan Approval shall be apportioned a percentage of monies on deposit in the fund. Payment shall be made directly to the vendors identified in the 9-1-1 service plan.
4. If the combined statewide 9-1-1 service costs exceed the available monies in the fund, monies shall be allocated by the Assistant Director on a percentage basis determined by the ratio of revenue to expenses for the state as a whole.

**Historical Note**

Adopted effective July 22, 1985 (Supp. 85-4). Amended effective June 14, 1990 (Supp. 90-2). Amended by final rulemaking a 6 A.A.R. 1971, effective May 12, 2000 (Supp. 00-2).

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

February 4, 2020

41-703. Duties of director

The director shall:

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

41-704. Emergency telecommunication services; administration; annual report; revolving fund

A. The director of the department of administration shall:

1. Adopt rules and procedures for administering and disbursing monies deposited in the emergency telecommunication services revolving fund, and at least quarterly review and approve requests by political subdivisions of this state for payment for operating emergency telecommunication service systems.
2. In fiscal year 2001-2002 and every two years thereafter, recommend to the legislature the amount of the telecommunication services excise tax that will be required during the following two fiscal years for

the purposes of this section, with supporting documentation and information. The legislature shall review the recommendation and take legislative action regarding the recommendation.

3. On or before December 1 of each year, submit a report to the director of the joint legislative budget committee containing:

(a) The department's expenditure plan for the current fiscal year for the emergency telecommunication services revolving fund established by this section.

(b) The status of the department's implementation of improvements to the 911 emergency system.

B. The emergency telecommunication services revolving fund is established to be administered by the director. The fund shall be used for:

1. Necessary or appropriate equipment or service for implementing and operating emergency telecommunication services through political subdivisions of this state. Priority shall be given to establishing emergency telecommunication services in those areas of the state that are without emergency telecommunication services.

2. Necessary or appropriate administrative costs or fees for consultants' services, not to exceed five percent of the amounts deposited annually in the revolving fund. The department may use up to two-thirds of the five percent of the amounts deposited annually in the revolving fund for administrative costs. The remainder of the five percent may be allocated for local network management of contracts with public safety answering points for emergency telecommunication services.

3. Monthly recurring costs of emergency telecommunication services, including expenditures for capital, maintenance and operation purposes.

4. A wireless carrier's costs associated with the provision, development, design, construction and maintenance of the wireless emergency telecommunication services in an amount that the wireless carrier has not recovered through the deduction mechanism specified in federal law.

C. At the end of each fiscal year, any unexpended monies in the fund, including interest, shall be carried over and do not revert to the state general fund but shall be applied to the extent possible to reduce the levy under section 42-5252, subsection A for the following fiscal year.

#### 42-5251. Definitions

In this article, unless the context otherwise requires:

1. "Customer" means a person or entity in whose name telephone or telecommunication services are rendered, as evidenced by a signature on an application or contract for service or by receipt or payment of bills regularly issued in the person's or entity's name.

2. "Emergency telecommunication services" means telecommunication services or systems that use number 911 or a similarly designated telephone number for emergency calls.

3. "Exchange access services" means telephone or telecommunication exchange access lines or channels that provide local access from the premises of a customer to the local telecommunications network to effect the transfer of information.

4. "Prepaid wireless telecommunications service" means wireless services that allow a caller to dial 911 to access the 911 system under a service that is paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.

5. "Provider" means any of the following:

(a) A public service corporation that offers telephone or telecommunications services pursuant to title 40 and that provides exchange access services.

(b) A supplier of wireless services.

(c) A supplier of any combination of wire and wireless services.

6. "Wireless services" means a commercial mobile service, as defined by 47 Code of Federal Regulations section 20.3, as amended.

**42-5252. Levy of tax; applicability**

A. A tax is levied on every provider in an amount as follows:

1. For the fiscal years beginning from and after June 30, 2001 and ending before July 1, 2006, thirty-seven cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

2. For fiscal year 2006-2007, twenty-eight cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

3. For the fiscal years beginning from and after June 30, 2007, twenty cents per month for each activated wire and wireless service account for the purpose of financing emergency telecommunication services.

B. A tax is levied on every public service corporation at the rate of 1.1 per cent of the public service corporations' gross proceeds of sales or gross income derived from the business of providing exchange access services. Revenues from the tax shall be used for the purpose of financing telecommunication devices for the deaf and the severely hearing and speech impaired under the program established pursuant to section 36-1947. For the purposes of this subsection, "public service corporation" means a public service corporation that offers telephone or telecommunications services pursuant to title 40 and that provides exchange access services.

C. Each provider shall state on the invoice to customers a separate line item stating the amount of tax levied pursuant to subsections A and B of this section.

D. Unless the context otherwise requires, article 1 of this chapter governs the administration of the tax imposed under this section.

E. The tax levied under this section does not apply to prepaid wireless telecommunications service.

#### 42-5401. Definitions

In this article, unless the context otherwise requires:

1. "Consumer" means a person who purchases prepaid wireless telecommunications service in a retail sale of prepaid wireless telecommunications service.
2. "Prepaid wireless telecommunications service" means a commercial mobile radio service, as defined by 47 Code of Federal Regulations section 20.3, as amended, that allows a caller to dial 911 to access the 911 system under a service that is paid for in advance and that is sold in predetermined units or dollars of which the number declines with use in a known amount.
3. "Prepaid wireless telecommunications service provider" means a person that provides prepaid wireless telecommunications service pursuant to a license that is issued by the federal communications commission.
4. "Retail sale of prepaid wireless telecommunications service" means a sale of prepaid wireless telecommunications service by a seller for any purpose other than resale.
5. "Seller" means a person who sells prepaid wireless telecommunications service to another person.
6. "Wireless services" means a commercial mobile service, as defined by 47 Code of Federal Regulations section 20.3, as amended.

#### 42-5402. Levy of tax

A. A prepaid wireless telecommunications E911 excise tax is levied on every seller in an amount of eight-tenths of one per cent of the gross proceeds of sales or gross income derived from the retail sale of prepaid wireless telecommunications service.

B. The seller is liable for the tax imposed under this section. The amount of tax may be separately stated on the invoice, receipt or other similar document that is provided to the consumer by the seller or otherwise disclosed to the consumer. The seller may retain three per cent of the amount of tax collected before remitting the tax to the department.

C. For the purpose of determining the location of a retail sale of prepaid wireless telecommunications service under this article, a retail sale of prepaid wireless telecommunications service occurs in this state if:

1. The retail sale of prepaid wireless telecommunications service is completed in person at a business location in this state.
2. If paragraph 1 of this subsection does not apply, the product is delivered to the consumer at an address in this state.
3. If paragraphs 1 and 2 of this subsection do not apply, the seller's records that are maintained in the ordinary course of business indicate that the consumer's address is located in this state and the seller's records are not made or kept in bad faith.

4. If paragraphs 1, 2 and 3 of this subsection do not apply, the consumer gives the seller an address in this state during the completion of the sale, including the consumer's payment instrument if no other address is available, and the address is not given in bad faith.

5. If paragraphs 1 through 4 of this subsection do not apply, the wireless telephone number is associated with a location in this state.

D. The amount of tax that is paid by a seller shall not be included in the tax base for computing any transaction privilege, sales, use, franchise or other similar tax or fee, however denominated, that is imposed by this state, any political subdivision of this state or any intergovernmental agency.

E. The tax levied under this section shall be the only E911 funding obligation for prepaid wireless telecommunications service in this state. This state, any political subdivision of this state or any intergovernmental agency shall not levy any other similar tax or fee, however denominated, on any seller or consumer for the sale, purchase, use or provision of prepaid wireless telecommunications service for the purpose of funding E911 service.

#### 42-5403. Administration of tax; distribution of revenues

A. Unless the context otherwise requires, article 1 of this chapter governs the administration of the tax imposed by this article.

B. A separate bond is not required of employees of the department in administering this article.

C. The procedures for a seller of prepaid wireless telecommunications service to document a sale that is not a retail sale of prepaid wireless telecommunications service shall be substantially similar to the procedures for documenting sale for resale transactions under the retail classification pursuant to sections 42-5009 and 42-5061.

D. The department shall separately account for the monies paid under this article and shall deposit, pursuant to sections 35-146 and 35-147, the net revenues collected under this article in the emergency telecommunications services revolving fund established by section 41-704.

#### 42-5404. Liability

A. Nothing in this article creates a cause of action or right to bring an action against a seller of prepaid wireless telecommunications service for damages to any person resulting from or incurred in connection with the provision of, or failure to provide, 911 or E911 service, or for identifying, or failing to identify, the telephone number, address, location or name associated with any person or device that is accessing or attempting to access 911 or E911 service.

B. Nothing in this article creates a cause of action or right to bring an action against a seller of prepaid wireless telecommunications service for damages to any person resulting from, or incurred in connection with, any lawful investigation by a law enforcement officer of the United States, this state, any other state or any political subdivision of this state or any other state.

**DEPARTMENT OF ADMINISTRATION**

Title 2, Chapter 1, Article 8, Travel Reduction Programs



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 13, 2020

**SUBJECT: DEPARTMENT OF ADMINISTRATION**  
Title 2, Chapter 1, Article 8, Travel Reduction Programs

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### Summary

This Five-Year Review Report (5YRR) from the Arizona Department of Administration (Department) relates to all rules in Title 2, Chapter 1, Article 8 related to Arizona's Travel Reduction Program (TRP). TRP implements A.R.S. § 49-588, which requires all Maricopa County employers of at least 50 employees to implement a plan to reduce the number of employees who drive alone to a work site. The state's goal is to have no more than 60 percent of employees driving alone to a work site. The TRP implements strategies such as subsidies, trip-planning tools, incentives such as preferential carpool parking, and telework agreements to encourage employees to use a mode of transportation other than driving alone.

In its previous 5YRR on these rules, approved by the Council on May 5, 2015, the Department indicated it had no plan to amend the rules in Article 8.

### Proposed Action

The Department indicates it has no plan to amend any rule in Article 8. However, given the major changes which have occurred in the way state employees perform their duties in response to COVID-19, the Department is considering, as allowed under A.R.S. § 41-710.01, making a rule to address reimbursement of internet connectivity for teleworking employees.

Whether this is done depends on the percentage of employees who continue to telework, the potential cost of the change, and how to determine eligibility.

**1. Has the agency analyzed whether the rules are authorized by statute?**

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

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

TRP implements a statutory requirement that requires all Maricopa County employers of at least 50 employees to implement a plan to reduce the number of employees who drive alone to a work site. The state's goal is to have no more than 60 percent of employees driving alone to a work site. The 2019 annual travel reduction survey showed that almost 74 percent of employees commute in a single occupancy vehicle.

All of the rules in Article 8 were amended in a rulemaking that went into effect on May 5, 2018. The economic, small business, and consumer impact statement prepared at that time was reviewed for this report. At the time, the Department estimated the rulemaking would have minimal economic impact on employees and transportation providers because the rulemaking did not substantively change the existing TRP rules. The Department believes this estimate was correct.

Because of the COVID-19 pandemic, major changes have occurred in the way state employees perform their duties. Approximately 60 percent of state employees in Maricopa County are now teleworking. This combined with the requirement that transit users enter buses from the rear and are unable to tap their TRP cards has led to a steep decline in the amount the state is billed for transit use by program participants. In April 2020, the monthly transit invoice decreased from an average of \$70,000 per month to \$1,612. As a result, the TRP believes the program could be more effective by allowing program funds to be used to reimburse internet connectivity for teleworking participants.

As of May 2020, there are 23,530 eligible employees in Maricopa County and 5,006 in Pima County. According to transit usage records for 2019, about eight percent of employees in Maricopa County used commuter transportation. Each transit rider took approximately 23 subsidized riders per month. Very few eligible employees in Pima County participate in the TRP.

In FY2019, the Department reimbursed \$605,735 in commuter transportation costs. The total cost of the TRP, including the subsidy, was \$1,020,982. The program resulted in 61,971,100 miles not driven, 2,478,844 gallons of gasoline saved, and 32 tons of air pollution avoided.

The Department identifies stakeholders as transportation providers, TRP-eligible employees, and the Department.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department determined the benefits of the rules outweigh the costs and impose the least burden and costs on those regulated by the rules. To participate in the TRP, an employee is required to complete an application authorizing deduction of the reduced cost for commuter transportation from the employee's pay and agreeing to use the TRP card only for commuter transportation. This small burden is outweighed by the savings from paying only the reduced cost for commuter transportation.

Transportation providers are required to track which eligible employees use commuter transportation and submit an invoice to the Department so reimbursement can be made. This small burden is outweighed by the benefit of potentially having additional users as a result of the TRP.

Participation of employees and transportation providers in the TRP helps to achieve the underlying regulatory objective of reducing air pollution from fossil fuels.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Department indicates it has not received any written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

The Department indicates the rules are clear, concise, understandable, and consistent with other rules and statutes.

As noted above, given recent changes in the way state employees perform their duties, with approximately 60 percent of state employees in Maricopa County are now teleworking, the Department believes the program could be more effective by allowing program funds to be used to reimburse internet connectivity for teleworking participants.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department indicates the rules are enforced as written.

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

Not applicable. The Department indicates that although the TRP is directed towards reducing air pollution, as required under the Clean Air Act, no federal law is directly applicable to these rules.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The Department indicates that none of the rules in Article 8 requires the issuance of a permit, license, or agency authorization.

**9. Conclusion**

The Department indicates that these rules are clear, concise, understandable, and enforced as written. The Department believes the rules could possibly be more effective by allowing program funds to be used to reimburse internet connectivity for teleworking participants. However, the Department indicates whether this is done depends on the percentage of employees who continue to telework, the potential cost of the change, and how to determine eligibility. As such, at this time, the Department proposes to take no action related to these rules. Council staff recommends approval of this report.

Douglas A. Ducey  
Governor



Andy Tobin  
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION**

HUMAN RESOURCES DIVISION  
100 NORTH FIFTEENTH AVENUE • SUITE 401  
PHOENIX, ARIZONA 85007  
(602) 542-5482

June 11, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE:** Arizona Department of Administration  
A.A.C. Title 2, Chapter 1, Article 8  
Travel Reduction Programs

Dear Ms. Sornsin:

The Department has attached a 5YRR for the referenced rules. The report is due under an extension by June 26, 2020.

The Department certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mary Marshall at 602-542-3630 or [mary.marshall@azdoa.gov](mailto:mary.marshall@azdoa.gov).

Sincerely,

*Emily Rajakovich*

[Emily Rajakovich \(Jun 11, 2020 10:39 PDT\)](#)

Emily Rajakovich  
Assistant Director  
Human Resources Division  
Arizona Department of Administration

**Five-year-review Report**  
**A.A.C. Title 2. Administration**  
**Chapter 1. Department of Administration**  
**Submitted for August 4, 2020**

INTRODUCTION

Arizona's Travel Reduction Program (TRP) implements A.R.S. § 49-588, which requires all Maricopa County employers of at least 50 employees to implement a plan to reduce the number of employees who drive alone to a work site. The state's goal is to have no more than 60 percent of employees driving alone to a work site. The TRP implements strategies such as subsidies, trip-planning tools, incentives such as preferential carpool parking, and telework agreements to encourage employees to use a mode of transportation other than driving alone.

Statute that generally authorizes the agency to make rules:      A.R.S. § 41-703(3)

1. Specific statute authorizing the rule:

R2-1-801. A.R.S. § 41-710.01

R2-1-802. A.R.S. § 41-710.01

R2-1-803. A.R.S. § 41-710.01

R2-1-804. A.R.S. § 41-710.01

R2-1-805. A.R.S. § 41-796.01

2. Objective of the rules:

R2-1-801. Definitions: The objective of the rule is to define terms used in the rules in a manner that is not explained adequately by a dictionary definition.

R2-1-802. Eligibility for Commuter Reimbursement Subsidy: The objective of the rule is to specify the responsibilities of an eligible employee who wishes to receive a transportation reimbursement subsidy.

R2-1-803. Commuter Transportation Reimbursement Subsidy Amount: The objective of the rule is to specify the factors considered when establishing the reimbursement subsidy.

R2-1-804. Commuter Transportation Reimbursement Subsidy Procedure: The objective of the rule is to establish the procedure for ensuring a transportation provider is paid for transportation provided to an eligible employee.

R2-1-805. Adjusted Work Hours: The objective of the rule is to establish the state's goal regarding adjusted work hours, including telework.

3. Are the rules effective in achieving their objectives? Yes  
Because of the Covid19 pandemic, major changes have occurred in the way state employees perform their duties. Approximately 60 percent of state employees in Maricopa County are now teleworking. This combined with the requirement that transit users enter buses from the rear and unable to tap their TRP cards, has led to a steep decline in the amount the state is billed for transit use by program participants. In April 2020, the monthly transit invoice decreased from an average of \$70,000 per month to \$1,612. As a result, the TRP believes the program could be more effective by allowing program funds to be used to reimburse internet connectivity for teleworking participants.

4. Are the rules consistent with other rules and statutes? Yes  
Applicable statutes include:
- The Clean Air Act (42 U.S.C. § 7401 et seq) outlines how states are to control air pollution;
  - 5 U.S.C. § 6501, defines “telework”;
  - A.R.S. § 41-101.03 requires the governor to designate a state agency to establish, administer, and operate a travel reduction program;
  - A.R.S. § 41-710.01 provides rulemaking authority addressing reimbursement of transportation and telecommuting costs;
  - A.R.S. § 38-612 addresses state employee payroll salary deductions;

- A.R.S. § 49-541 provides definitions regarding applicable areas in Maricopa and Pima Counties;
- A.R.S. § 49-581 provides definitions regarding travel reduction program;
- A.R.S. § 49-588 requires major employers to establish and administer a travel reduction program;
- A.R.S. § 49-551(D) provides funding for the travel reduction program.

5. Are the rules enforced as written? Yes
6. Are the rules clear, concise, and understandable? Yes
7. Has the agency received written criticisms of the rules within the last five years? No

8. Economic, small business, and consumer impact comparison:

All of the rules in Article 8 were amended in a rulemaking that went into effect on May 5, 2018 (See 24 A.A.R. 625). The economic, small business, and consumer impact statement prepared at that time was reviewed for this report. At the time, the Department estimated the rulemaking would have minimal economic impact on employees and transportation providers because the rulemaking did not substantively change the existing TRP rules. The Department believes this estimate was correct.

There are currently four transportation providers: two transit providers (one each in Maricopa and Pima counties), one van-pool provider, and one bike share provider. As an incentive for program participation, Lyft provides two emergency rides each year that are paid for with program funds but not transit subsidy funds. The Arizona Department of Corrections operates its own van-pool service. Transportation providers are required to track which eligible employees use commuter transportation so reimbursement can be made. They benefit from potentially having additional users as a result of the travel reduction programs.

As of May 2020, there are 23,530 eligible employees in Maricopa County and 5,006 in Pima County. According to transit usage records for 2019, about eight percent of employees in Maricopa County used commuter transportation. Each transit rider took approximately 23 subsidized rides per month.

Very few eligible employees in Pima County participate in the TRP.

Carpool activity is not subsidized by the TRP but those employees who register their carpools receive a special parking permit and qualify for two free emergency rides each year. According to the 2019 annual travel reduction survey, almost nine percent of employees carpool.

The state's goal is to have no more than 60 percent of employees commuting to and from work in a single occupancy vehicle. The 2019 annual travel reduction survey showed that almost 74 percent of employees commute in a single occupancy vehicle.

A.R.S. § 41-796.01 requires adjusted work hours be an option for eligible employees. Data from the 2019 survey indicate nearly three percent of employees work adjusted hours. By the end of FY2019, 10.4 percent of state employees teleworked at least one day each pay period.

The current reimbursement subsidy percentage is 50 percent in Maricopa County and 100 percent in Pima County. Van-pool users receive a 100 percent subsidy. In FY2019, the Department reimbursed \$605,735 in commuter transportation costs. The total cost of the TRP, including the subsidy, was \$1,020,982. Funds for the TRP come from the Air Quality Fund established under A.R.S. § 49-551.

The ultimate objective of the TRP is to improve air quality and benefit the health of all who live in Areas A and B. During FY2019, the programs resulted in 61,971,100 miles not driven, 2,478,844 gallons of gasoline saved, and 32 tons of air pollution avoided.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

Yes

In a 5YRR approved by the Council on May 5, 2015, the Department indicated it had no plan to amend the rules in Article 8.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Department determined the benefits of the rules outweigh the costs and impose the least burden and costs on those regulated by the rules. To participate in the TRP, an employee is required to complete an application authorizing deduction of the reduced cost for commuter transportation from the employee's pay and agreeing to use the TRP card only for commuter transportation. This small burden is outweighed by the savings from paying only the reduced cost for commuter transportation.

Transportation providers are required to track which eligible employees use commuter transportation and submit an invoice to the Department so reimbursement can be made. This small burden is outweighed by the benefit of potentially having additional users as a result of the TRP.

Participation of employees and transportation providers in the TRP helps to achieve the underlying regulatory objective of reducing air pollution from fossil fuels.

12. Are the rules more stringent than corresponding federal laws? No

Although the TRP is directed towards reducing air pollution, as required under the Clean Air Act, no federal law is directly applicable to these rules.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

None of the rules requires issuance of a permit.

14. Proposed course of action:

The Department has no plan to amend any rule in Article 8. However, as indicated in item 3, the Department is considering, as allowed under A.R.S. § 41-710.01, making a rule to address reimbursement of internet connectivity for teleworking employees. Whether this is done depends on the percentage of employees who continue to telework, the potential cost of the change, and how to determine eligibility.

**TITLE 2. ADMINISTRATION**  
**CHAPTER 1. DEPARTMENT OF ADMINISTRATION**  
**Supplement 18-1**

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, through March 31, 2018.

**Questions about these rules? Contact:**

Department: Department of Administration  
Name: Karen Ziegler, Project Manager, AZPSBN  
Address: 100 N. 15th Ave., Suite 305  
Phoenix, AZ 85007  
Telephone: (602) 542-6032  
E-mail: [Karen.ziegler@azdoa.gov](mailto:Karen.ziegler@azdoa.gov)  
Website: [www.doa.az.gov](http://www.doa.az.gov)

**ARTICLE 8. TRAVEL REDUCTION PROGRAMS**

*Article 8, consisting of Sections R2-1-801 through R2-1-805 adopted effective December 30, 1994 (Supp. 94-4).*

*Article 8, consisting of Sections R2-1-801 through R2-1-804 repealed effective December 30, 1994 (Supp. 94-4).*

Section		
R2-1-801.	Definitions	9
R2-1-802.	Eligibility for Commuter Transportation Reimbursement Subsidy	10
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R2-1-804.	Commuter Transportation Reimbursement Subsidy Procedure	10
R2-1-805.	Adjusted Work Hours	10

**ARTICLE 8. TRAVEL REDUCTION PROGRAMS**

**R2-1-801. Definitions**

In this Article, unless otherwise specified:

1. "Agency head" means the head of each department, agency, board, and commission of this state.
2. "Area A and Area B" have the same meaning in A.R.S. § 49-541.
3. "Commuter transportation" means a mode of transportation used by an eligible employee to travel to or from the eligible employee's place of employment and made available to the eligible employee by a transportation provider under contract with the state of Arizona.
4. "Director" means the Director of the Department of Administration or the director's designee.
5. "Eligible employee" means an employee, in pay status, and lives or works in Area A or Area B, except a university employee.
6. "Employee" means an individual elected or appointed to a state position, or employed on a part-time or full-time basis by a department, agency, board, or commission of this state.
7. "Pay status" has the meaning in R2-5A-101.
8. "Period" means October 1 through the following April 1.
9. "Reduced cost" means the portion of the total cost of commuter transportation that is paid by an eligible employee.
10. "Reimbursement subsidy" means the portion of the total cost of commuter transportation that is paid on behalf of an eligible employee to a transportation provider through a contract with the state of Arizona.
11. "Telework" has the same meaning as at 5 U.S.C. 6501.
12. "Transportation provider" means:
  - a. An incorporated city or town,
  - b. A regional public transportation authority established under A.R.S. § 48-5102,
  - c. A regional transportation authority established under A.R.S. § 48-5302,
  - d. A commercial enterprise, or
  - e. An Arizona state agency.

**Historical Note**

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 4579, effective February 5, 2008 (Supp. 07-4). Corrected rule reference to R2-5A-101 in subsection (5) due to Personnel Reform rules made in 2012; statutory citations updated in subsections (7), (9) and (11) according to Laws 2012, Ch. 321, correction letter M15-192 filed by agency (Supp. 14-2). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

**R2-1-802. Eligibility for Commuter Transportation Reimbursement Subsidy**

**A.** The Director shall pay a reimbursement subsidy on behalf of an eligible employee who:

1. Completes an application, using a form available from the Department of Administration, for authorization to pay the reduced cost for commuter transportation; and
  2. Uses commuter transportation to travel to or from the eligible employee's place of employment.
- B.** An eligible employee who uses public or private bus or light rail as a means of commuter transportation shall:
1. Authorize payroll deduction under A.R.S. § 38-612(B)(9) of the reduced cost; and
  2. As a condition of being authorized to pay the reduced cost for commuter transportation and being issued a transportation card, agree:
    - a. Not to allow anyone else to use the transportation card;
    - b. To use the transportation card only for commuter transportation unless the eligible employee incurs the transportation provider's maximum monthly charge;
    - c. To maintain payroll deduction authorization;
    - d. To notify the Department of Administration if the transportation card is lost or stolen;
    - e. To pay \$5 on a payroll deduction to replace a lost, damaged, or stolen transportation card;
    - f. To surrender the transportation card upon termination of employment with the state; and
    - g. That use of the transportation card after receiving notice of a change to the terms of using the transportation card constitutes agreement to the change.

**Historical Note**

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

**R2-1-803. Commuter Transportation Reimbursement Subsidy Amount**

- A.** The Director shall determine the amount of reimbursement subsidy, up to 100% of the actual cost of commuter transportation, based upon:
1. The number of eligible employees authorized under R2-1-802 to pay reduced cost for commuter transportation;
  2. The cost of the commuter transportation; and
  3. The amount of state funds appropriated by the Legislature for reimbursement subsidy purposes.
- B.** The Director shall notify an eligible employee of:
1. The initial percentage of reimbursement subsidy before the employee applies under R2-1-802(A)(1); and
  2. Any change in the amount of reimbursement subsidy at least 30 days before the effective date of the change.

**Historical Note**

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

**R2-1-804. Commuter Transportation Reimbursement Subsidy Procedure**

- A.** A transportation provider shall submit a monthly invoice to the Director that itemizes the total commuter transportation costs incurred by each eligible employee.
- B.** The Director shall pay the transportation provider the reimbursement subsidy amount for each eligible employee.
- C.** The eligible employee shall pay the reduced cost to the transportation provider either directly or, if required under R2-1-802(B), through payroll deduction.

**Historical Note**

Adopted effective May 31, 1991 (Supp. 91-2). Section repealed, new Section adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

**R2-1-805. Adjusted Work Hours**

- A.** During the period, each agency head shall provide work schedule options so a minimum of 85 percent of employees whose offices are located in Area A or Area B are on adjusted work hours. Adjusted work hours are schedules that:
1. Begin the workday on or before 7:30 a.m., or on or after 8:30 a.m., and conclude the workday on or before 4:30 p.m., or on or after 5:30 p.m.;
  2. Adjust work hours into a four-day, 40-hour work week. Employees shall avoid a workday that begins between 7:30 a.m. and 8:30 a.m. or concludes between 4:30 p.m. and 5:30 p.m., whenever possible; or
  3. Allow the employee to telework.
- B.** Notwithstanding the requirements of subsection (A), each agency shall comply with A.R.S. § 38-401 requiring state offices to be open from 8:00 a.m. until 5:00 p.m.

**Historical Note**

Adopted effective December 30, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 746, effective February 1, 2000 (Supp. 00-1). Amended by final rulemaking at 13 A.A.R. 4579, effective February 5, 2008 (Supp. 07-4). Section R2-1-805 repealed; new Section R2-1-805 renumbered from R2-1-602 and amended by final rulemaking at 24 A.A.R. 625, effective May 5, 2018 (Supp. 18-1).

February 4, 2020

41-703. Duties of director

The director shall:

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

41-710.01. Reimbursement of transportation and telecommuting costs; definition

- A. The director shall adopt rules to provide for the reimbursement of up to one hundred per cent of the cost to state employees of either:
1. Public transportation, vanpool or private bus service to and from their place of employment.
  2. Telecommuting connectivity.

B. For the purposes of this section, "public transportation" means local transportation of passengers by means of a public conveyance operated or licensed by an incorporated city or town or a regional public transportation authority.

41-796.01. Adjusted work hours

The director by rule shall require adjusted work hours for at least eighty-five per cent of state employees with offices located in area A or area B as defined in section 49-541 each year beginning October 1 and ending April 1 in order to reduce the level of carbon monoxide concentrations caused by vehicular travel.

**STATE BOARD OF PHARMACY (F20-0808)**

Title 4, Chapter 23, Articles 7, 9, and 10, Board of Pharmacy



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 13, 2020

**SUBJECT: BOARD OF PHARMACY (F20-0808)**  
Title 4, Chapter 23, Articles 7, 9, and 10, Board of Pharmacy

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### Summary

This Five Year Review Report (5YRR) from the State Board of Pharmacy relates to rules in Title 4, Chapter 23, Articles 7, 9, and 10. The rules address the following:

- **Article 7:** Non-Pharmacy Licensed Outlets - General Provisions;
- **Article 9:** Penalties and Miscellaneous; and
- **Article 10:** Uniform Controlled Substances and Drug Offenses.

In the previous 5YRR for these rules, which the Council approved in September 2015, the Board stated it would amend R4-23-701.04, R4-23-702, and R4-23-1003. In the previous 5YRR, the Board stated its goal was to submit a rulemaking on these rules to the Council by March 31, 2017. The Board states that it did not complete this course of action because it viewed these rule amendments as a low priority. The Board further states that since September 2015, it has completed 10 higher priority rulemakings and 4 5YRRs.

## **Proposed Action**

The Board does not propose to take any action on the rules at this time. The Board states that the issues identified with the rules in this 5YRR do not interfere with their effectiveness or understandability, and will address the issues identified in this 5YRR when it decides to make a substantive change to the rules in Article 7, 9, or 10.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Board cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Board currently licenses 11,371 pharmacists and permits 2,490 pharmacies. Ninety-two of the pharmacies have a limited service pharmacy permit, which enables the pharmacy to provide services to a long-term care facility.

The Board did not receive any information that causes it to modify its previous conclusion that the economic impact of the rules is minimal. Most of the rules in Article 7 were last amended in 2013. At the time, the primary economic cost for licensees was due to the requirement that pharmacies providing services in long-term care facilities establish, implement, and periodically update policies and procedures regarding distributing, storing, and securing drugs. This minor cost was offset by the potential savings from the use of an automated emergency drug supply unit and an automated dispensing system and reduced frequency for restocking the emergency drug supply unit.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board states that benefits of protecting public health and safety outweigh the minimal costs associated with complying with the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Board did not receive any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Board states that the rules are effective in achieving their objectives.

The Board further states that the rules are mostly clear, concise, and understandable. However, the Board states that its statutes no longer use the term "graduate intern," and

that this term needs to be removed from its rules in R4-23-701.02(D)(4) and R4-23-701.04(D)(3)(a)(i).

The Board states that the rules are mostly consistent with other rules and statutes, except that R4-23-701.04 is no longer consistent with DEA's schedule of controlled substances, as explained in the 5YRR. The Board states that it is in the process of granting a deviation from this rule to address this discrepancy pursuant to its statutory authority in A.R.S. § 32-1904(B)(6). Upon review of this statute, Council staff finds that this approach is permissible.

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes. The Board states that the rules are mostly enforced as written, except for R4-23-701.04 (Long-term Care Facilities Pharmacy Services: Automated Dispensing Systems). The Board states it enforces this rule with a deviation granted under A.R.S. § 32-1904(B)(6). Upon review of this statute, Council staff finds that this method of enforcement is permissible.

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

No. The Board states that the rules under review are not more stringent than corresponding federal regulations regarding controlled substances. *See* 21 CFR Chap II, Part 1300 to 1321.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

No. The Board states that the rules in Articles 9 and 10 and one rule in Article 7, R4-23-701.03, were made prior to July 29, 2010. The remaining rules in Article 7 were made after July 29, 2010 but do not require the issuance of a permit, license, or regulatory authorization.

**9. Conclusion**

Council staff finds that the Board conducted an adequate analysis of its rules pursuant to A.R.S. § 41-1056(A). Council staff notes that the rules are mostly clear, concise, understandable, effective, and consistent with other rules and statutes.

However, Council staff notes that the Board identifies two rules, R4-23-701.02(D)(4) and R4-23-701.04(D)(3)(a)(i), which use the term "graduate intern," which is no longer consistent with statute. The Board does not propose to amend these two rules to remove this term, which could be accomplished through an expedited rulemaking. Instead, the Board states that it will wait until it does a more substantive rulemaking on the rules reviewed in this 5YRR.

While Council staff recommends approval of this report, Council staff encourages the Council to discuss with the Board whether it could potentially amend these two rules sooner to make them more consistent with the Board's statutes.



## Arizona State Board of Pharmacy

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Physical Address: 1616 W. Adams, Suite 120, Phoenix, AZ 85007  
Mailing Address: P.O. Box 18520, Phoenix, AZ 85005  
p) 602-771-2727 f) 602-771-2749 www.azpharmacy.gov

June 19, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

**RE: Arizona Board of Pharmacy  
Five-year-review Report  
4 A.A.C. 23, Articles 7, 9, and 10**

Dear Ms Sornsins:

The Arizona Board of Pharmacy submits the referenced report for Council's review and approval. The report is due July 31, 2020.

The Board certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Kamlesh Gandhi at 602-771-2740 or [kgandhi@azpharmacy.gov](mailto:kgandhi@azpharmacy.gov)

Sincerely,

A handwritten signature in black ink that reads "Kam Gandhi".

Kamlesh Gandhi  
Executive Director

**Five-year-review Report**  
**A.A.C. Title 4. Professions and Occupations**  
**Chapter 23. Arizona Board of Pharmacy**  
**Articles 7, 9, and 10**  
**Submitted for August 4, 2020**

INTRODUCTION

The Arizona State Board of Pharmacy protects public health, safety and welfare by regulating the practice of pharmacy and the distribution, sale, and storage of prescription medications and devices and non-prescription medications.

The Board accomplishes its mission by:

- Issuing licenses to pharmacists, interns, and pharmacy technicians,
- Issuing permits to pharmacies, manufacturers, wholesalers, and distributors,
- Conducting compliance inspections of permitted facilities,
- Investigating complaints & adjudicating violations of state and federal laws and rules,  
and
- Making, reviewing, and enforcing rules.

Statute that generally authorizes the agency to make rules: A.R.S. § 32-1904(A)(1)

1. Specific statute authorizing the rule:

R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-701.01. Long-term Care Facilities Pharmacy Services: Provider Pharmacist: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency Drugs: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-701.03. Long-term Care Facilities Pharmacy Services: Emergency Drug Prescription Order: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-701.04. Long-term Care Facilities Pharmacy Services: Automated Dispensing Systems: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-702. Hospice Inpatient Facilities: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-703. Assisted Living Facilities: A.R.S. § 32-1901(84)(b) and 32-1968(A)(5)

R4-23-704. Customized Patient Medication Packages: A.R.S. § 32-1904(A)(1) and (B)(3)

R4-23-901. Penalty for Violations: A.R.S. §§ 32-1927, 32-1927.01, and 32-1927.02

R4-23-1003. Records and Order Forms: A.R.S. §§ 36-2512(B), 36-2513(B), 36-2514(C), 36-2515(B), and 36-2523

R4-23-1005: Substances Excepted from the Schedules of Controlled Substances: A.R.S. §§ 36-2512(B), 36-2513(B), 36-2514(C), 36-2515(B), and 36-2523

R4-23-1006. Substances Excepted from Drug Offenses: A.R.S. §§ 36-2512(B), 36-2513(B), 36-2514(C), 36-2515(B), and 36-2523

2. Objective of the rules:

R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist: The objective of this rule is to specify the responsibilities of a long-term care consultant pharmacist when providing pharmacy services in a facility.

R4-23-701.01. Long-term Care Facilities Pharmacy Services: Provider Pharmacist: The objective of this rule is to establish procedures for a provider pharmacy supplying prescription medications for residents of a long-term care facility.

R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency Drugs: The objective of this rule is to establish procedures for a provider pharmacy to maintain an emergency drug supply within a long-term care facility.

R4-23-701.03. Long-term Care Facilities Pharmacy Services: Emergency Drug Prescription Order: The objective of this rule is to establish requirements for pharmacist evaluation of a prescription order for drugs removed from an emergency drug supply within a long-term care facility.

R4-23-701.04. Long-term Care Facilities Pharmacy Services: Automated Dispensing Systems: The objective of this rule is to establish requirements for use of an automated dispensing system within a long-term care facility.

R4-23-702. Hospice Inpatient Facilities: The objective of this rule is to establish requirements for providing pharmacy services to patients in a hospice inpatient facility.

R4-23-703. Assisted Living Facilities: The objective of this rule is to establish requirements for providing pharmacy services in an assisted living facility.

R4-23-704. Customized Patient Medication Packages: The objective of this rule is to clarify that medications dispensed in a customized patient medication package must meet the guidelines in the Official Compendium regarding labeling, packaging, and recordkeeping and comply with all state and federal law.

R4-23-901. Penalty for Violations: The objective of this rule is to provide notice of possible consequences of violating a statute or rule relating to pharmacy licensure and regulation.

R4-23-1003. Records and Order Forms: The objective of this rule is to establish recordkeeping requirements for controlled substances and identify drugs that are exempted from schedules of controlled substances.

R4-23-1005: Substances Excepted from the Schedules of Controlled Substances: The objective of this rule is to reference drugs and chemicals that are excepted from schedules of controlled substances.

R4-23-1006. Substances Excepted from Drug Offenses: The objective of this rule is to clarify that drugs and chemicals excepted from schedules of controlled substances are not dangerous drugs.

3. Are the rules effective in achieving their objectives? Yes

The Board believes the rules are effective in achieving their objectives because the Board successfully uses the rules to address pharmacy services in licensed facilities with continuous nursing services, discipline licensees when necessary, and implement the Uniformed Controlled Substances Act. The Board determined the rules would be more effective if:

- Other licensed inpatient facilities, such as behavioral health facilities, in which continuous nursing services are provided, were added to the rules; and
- Materials incorporated by reference in R4-23-701 and R4-23-1005 were updated.

4. Are the rules consistent with other rules and statutes? Mostly yes

R4-23-701.04: The DEA has rescheduled hydrocodone combination products from a Schedule III to Schedule II controlled substance. Hydrocodone combination products are widely used in long-term care facilities and not providing them in an automated dispensing system could potentially negatively impact patient care. As a result, the Board determined the restriction on not stocking Schedule II drugs in an automated dispensing system needs to be removed. The Board is working with the FDA and DEA to resolve this issue. The Board cannot change federal law but it has authority to deviate from a state requirement for technological advancements such as an automated dispensing system. The Board is currently dealing with this issue by granting a deviation to the rule under this statutory authority, which

is at A.R.S. § 32-1904(B)(6). Additionally, at its July 2020 meeting, the Board requested the use of automated dispensing systems in long-term care facilities be added for discussion to a future agenda.

5. Are the rules enforced as written? Mostly yes  
The Board enforces R4-23-701.04 consistent with a deviation granted under A.R.S. § 32-1904(B)(6).
  
6. Are the rules clear, concise, and understandable? Mostly yes  
The Board's statutes no longer use the term "graduate intern." This term needs to be removed from R4-23-701.02(D)(4) and R4-23-701.04(D)(3)(a)(i).
  
7. Has the agency received written criticisms of the rules within the last five years? No
  
8. Economic, small business, and consumer impact comparison:  
The Board has received no information that causes it to modify its previous conclusion that the economic impact of the rules is minimal. Most of the rules in Article 7 were last amended in 2013. At the time, the primary economic cost for licensees was due to the requirement that pharmacies providing services in long-term care facilities establish, implement, and periodically update policies and procedures regarding distributing, storing, and securing drugs. This minor cost was off-set by the potential savings from use of an automated emergency drug supply unit and an automated dispensing system and reduced frequency for restocking the emergency drug supply unit.

The only rule amended since the Board's 2015 5YRR is R4-23-703 (See 23 A.A.R. 2424). The EIS from the rulemaking was available for review. In the rulemaking, the Board made R4-23-703 consistent with standard practice of assisted living facilities, rules of the Department of Health Services, and an advisory opinion of the Board of Nursing. The amendment allows a pharmacist to dispense a drug to an assisted living facility resident after receiving an oral prescription order rather than waiting for a written order. A written prescription order is provided following the oral order. The amendment reduced a regulatory

burden, made the rule consistent with standard practice of other agencies, and provided a benefit to residents of assisted living facilities.

The Board currently licenses 11,731 pharmacists and permits 2,490 pharmacies. Ninety-two of the pharmacies have a limited service pharmacy permit, which enables the pharmacy to provide services to a long-term care facility.

9. Has the agency received any business competitiveness analyses of the rules? No

10. How the agency completed the course of action indicated in the agency's previous 5YRR: No

In a 5YRR approved by the Council on September 1, 2015, the Board indicated it intended to amend R4-23-701.04, R4-23-702, and R4-23-1003. The Board has yet to amend these rules because it determined the needed changes were low priority and it was a better use of state resources to address other rulemaking issues. Since September 1, 2015, the Board has completed 10 higher-priority rulemakings and four 5YRRs.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board determined the minimal costs associated with complying with the rules are outweighed by the benefits of protecting public health and safety. The following rule provisions impose the minimal costs:

- A consultant pharmacist is required to be licensed by the Board;
- A consultant pharmacist is required to perform certain specified tasks including ensuring records and reports regarding drug use are available;
- A provider pharmacy is required to ensure the availability of an emergency drug supply unit;
- A provider pharmacy is required to develop and implement policies and procedures regarding drug recall, storage and use of and accessing an emergency drug supply unit;

- Consistent with federal law, pharmacists who dispense controlled substances are required to obtain a DEA registration;
- A pharmacist who uses an automated dispensing system in a long-term care facility is required to notify the Board, develop policies and procedures, including recordkeeping procedures, regarding use of the automated dispensing system, and implement an ongoing quality assurance program;
- A pharmacy that dispenses, sells, or delivers a drug to an assisted living facility resident is required to verify the assisted living facility is licensed;
- A pharmacist-in-charge is required to conduct an inventory of all controlled substances within 10 days of assuming the position of pharmacist-in-charge and report losses of controlled substances;
- Full-service drug wholesale and drug manufacturer permittees are required to conduct an annual inventory of controlled substances; and
- Persons that manufacture, repackage, relabel, receive, sell, deliver, or dispose of a controlled substance are required to record and maintain specified information.

12. Are the rules more stringent than corresponding federal laws? No

The rules are not more stringent than the federal laws relating to controlled substances. (See 21 CFR Chap II, Part 1300 to 1321).

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

The rules in Articles 9 and 10 and one of the rules in Article 7 (See R4-23-701.03) were made before July 29, 2010. The remaining rules in Article 7 were made after the date but none requires issuance of a permit, license, or regulatory authorization.

14. Proposed course of action:

The Board determined the issues identified in this report do not interfere with the effectiveness or understandability of the rules and therefore, a rulemaking specifically to address the issues is not a good use of state resources. If the Board does a rulemaking that

makes a substantive change to a rule in Article 7, 9, or 10, the Board will address the identified issues in the Article at that time.

**ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT<sup>1</sup>**

**TITLE 4. PROFESSIONS AND OCCUPATIONS**

**CHAPTER 23. BOARD OF PHARMACY**

1. Identification of the rulemaking:

The Board is making its rules consistent with standard practice of assisted living facilities (ALF), rules of the Department of Health Services (See R9-10-816(A)(2)), which licenses ALFs, and an advisory opinion of the Board of Nursing (<https://www.azbn.gov/media/1067/ao-orders-accepting-transcribing-reviewing-orders.pdf>). As a convenience to residents, personnel of ALFs, after obtaining verbal direction from a resident's physician, call the prescription order into the resident's pharmacy of choice.

A.R.S. § 32-1968(A)(5) allows a pharmacist to dispense a drug on an oral prescription order that is promptly reduced to writing and filed by the pharmacist. A.R.S. § 32-1901(77)(b) indicates a prescription order is one transmitted to a pharmacist through word of mouth, telephone, or other means of communication directed by a medical practitioner.

The Board has determined that as currently written, R4-23-703, which provides that a pharmacy shall dispense, sell, or deliver a prescription or nonprescription drug to an ALF resident only after receiving a prescription order from the resident's medical practitioner, is inconsistent with the standard practice of ALFs, rules of the Department of Health Services, and the advisory opinion of the Board of Nursing. This rulemaking will make the Board's rules consistent with the practices of other agencies.

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

Until the rulemaking is completed, the Board's rules will continue to impose an unnecessary regulatory burden because the current rule is inconsistent with the standard practice of other agencies and is not as authorized by statute.

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

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

The current rule imposes an unnecessary regulatory burden on ALFs and the residents served.

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

When the rulemaking is complete, the Board's rule will be as authorized by statute and consistent with the standard practice of other agencies. The unnecessary regulatory burden will be removed.

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

The Board believes making its rules consistent with standard practice of other agencies, as authorized by the Board's statutes, will benefit residents of ALFs and the personnel who provide their care by enabling a pharmacist to fill many prescription orders on verbal direction from ALF personnel. The rulemaking will eliminate a regulatory burden caused by the Board's rules being inconsistent with the practices of other agencies.

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: Kamlesh Gandhi

Address: 1616 W Adams Street, Suite 120  
Phoenix, AZ 85007

Telephone: (602) 771-2740

Fax: (602) 771-2749

E-mail: kgandhi@azpharmacy.gov

Web site: www.azpharmacy.gov

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

The 2,285 pharmacy permit holders and the Board will be directly affected by and directly benefit from this rulemaking.

Pharmacy permit holders currently dispense, sell, and deliver both non-narcotic prescription and non-prescription drugs to residents of ALFs after receiving an order from the resident's medical practitioner, licensed nurse, or ALF manager or caregiver. This practice, however, is arguably inconsistent with the Board's rules. Pharmacy permit holders will benefit from having this inconsistency, which amounts to an unnecessary regulatory burden, removed. Because pharmacy permit holder are currently dispensing,

selling, and delivering drugs to residents of ALFs in a manner consistent with the rule as it is being amended, the rulemaking will provide a modest economic benefit for pharmacy permit holders due to a reduction in transaction costs associated with complying with inconsistent rules and statutes.

The Board incurred the minimal expense of completing this rulemaking and will have the benefit of having its rules as authorized by statute and consistent with the standard practice of other agencies. The Board also benefits from removing an unnecessary regulatory burden.

5. Cost-benefit analysis:

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

The Board is the only state agency directly affected by the rulemaking. Its costs and benefit are discussed in item 4. The Board will not need new FTEs to implement and enforce the rule.

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

No political subdivision is directly affected by the rulemaking.

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

Pharmacy permit holders are businesses directly affected by the rulemaking. Their costs and benefits are discussed in item 4.

6. Impact on private and public employment:

The Board expects the rulemaking to have no impact on private or public employment.

7. Impact on small businesses<sup>2</sup>:

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

Pharmacy permit holders are small business subject to the rulemaking.

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

There are no new administrative or others costs required for compliance with the rulemaking.

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

The rulemaking has only benefits for pharmacy permit holders. There are no costs to comply with it. As a result, there are no methods to reduce impact on small businesses.

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<sup>2</sup> Small business has the meaning specified in A.R.S. § 41-1001(21).

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

There are no private persons or consumers directly affected by the rulemaking. Residents of ALFs may be indirectly affected.

9. Probable effects on state revenues:

There will be no effect on state revenue.

10. Less intrusive or less costly alternative methods considered:

The rulemaking simply removes an unnecessary regulatory burden. There is no less intrusive or less costly alternative method.

## ARTICLE 7. NON-PHARMACY LICENSED OUTLETS – GENERAL PROVISIONS

### R4-23-701. Long-term Care Facilities Pharmacy Services: Consultant Pharmacist

- A. The long-term care consultant pharmacist as defined in R4-23-110 shall:
1. Possess a valid Arizona pharmacist license issued by the Board;
  2. Ensure the provision of pharmaceutical patient care services as defined in R4-23-110;
  3. Review the distribution and storage of drugs and devices and assist the facility in establishing policies and procedures for the distribution and storage of drugs and devices;
  4. Provide resident evaluation programs that relate to monitoring the therapeutic response and utilization of all drugs and devices prescribed or administered to residents, using as guidelines the most current indicators established by the Centers for Medicare and Medicaid Services, United States Department of Health and Human Services as required in 42 CFR 483.60 (revised October 1, 2010, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.);
  5. Serve as a resource for pharmacy-related education services within the facility;
  6. Participate in quality management of resident care in the facility; and
  7. Communicate with the provider pharmacy regarding areas of mutual concern and resolution.
- B. A long-term care consultant pharmacist shall ensure that:
1. When a provider pharmacy is not open for business, arrangements are made in advance by the long-term care consultant pharmacist, in cooperation with the pharmacist-in-charge of the provider pharmacy and the director of nursing and medical staff of the long-term care facility, for providing emergency drugs for the licensed nursing staff to administer to the residents of the facility using an emergency drug supply unit located at the facility;
  2. The label and packaging of prescription-only and nonprescription drugs intended for use within a long-term care facility complies with state and federal law; and
  3. The long-term care facility:
    - a. Stores controlled substances listed in A.R.S. § 36-2513 in a separately locked and permanently affixed compartment, unless the facility uses a single-unit package medication distribution system; and
    - b. Maintains accurate records of controlled substance administration or ultimate disposition.
- C. The long-term care consultant pharmacist shall:
1. Ensure availability of records and reports designed to provide the data necessary to evaluate the drug use of each long-term care facility resident that include the following:
    - a. Provider pharmacy patient profiles and long-term care facility medication administration records;
    - b. Reports of suspected adverse drug reactions;
    - c. Inspection reports of drug storage areas with emphasis on detecting outdated drugs; and
    - d. Accountability reports, that include:
      - i. Date and time of administration,
      - ii. Name of the person who administered the drug,
      - iii. Documentation and verification of any wasted or partial doses,
      - iv. Exception reports for refused doses, and
      - v. All drug destruction forms; and
  2. Identify and report drug irregularities and dispensing errors to the prescriber, the director of nursing of the facility, and the provider pharmacy.
- D. A long-term care consultant pharmacist or pharmacist-in-charge of a provider pharmacy shall ensure that:
1. Discontinued or outdated drugs, including controlled substances, are destroyed or disposed of in a timely manner using methods consistent with federal, state, and local requirements and subject to review by the Board or its staff; and
  2. Drug containers with illegible or missing labels are:
    - a. Identified; and
    - b. Replaced or relabeled by a pharmacist employed by the pharmacy that dispensed the prescription medication.

#### Historical Note

Former Rules 6.8110, 6.8120, 6.8130, 6.8140, 6.8150, 6.8160, and 6.8170; Amended effective Aug. 10, 1978 (Supp. 78-4). Section repealed, new Section adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

### R4-23-701.01. Long-term Care Facilities Pharmacy Services: Provider Pharmacy

The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:

1. A prescription medication is provided only by a valid prescription order for an individual long-term care facility resident, properly labeled for that resident, as specified in this subsection. Nothing in this Section shall prevent a provider pharmacy from supplying nonprescription drugs in a manufacturer's unopened container or emergency drugs using an emergency drug supply unit as specified in R4-23-701.02;

2. A prescription medication label for a long-term care facility resident complies with A.R.S. §§ 32-1968 and 36-2525 and contains:
  - a. The drug name, strength, dosage form, and quantity; and
  - b. The beyond-use-date;
3. Only a pharmacist employed by the pharmacy that dispensed the prescription medication may, through the exercise of professional judgment, relabel or alter a prescription medication label that is illegible or missing;
4. The provider pharmacy develops and implements drug recall policies and procedures that protect the health and safety of facility residents. The drug recall procedures shall include immediate discontinuation of any patient level recalled drug and notification of the prescriber and director of nursing of the facility; and
5. Drugs previously dispensed to a resident of the long-term care facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, are not repackaged.

**Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-701.02. Long-term Care Facilities Pharmacy Services: Emergency Drugs**

- A. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that:
  1. An emergency drug supply unit is available within the long-term care facility,
  2. Drugs contained in an emergency drug supply unit remain the property of the provider pharmacy, and
  3. Controlled substance drugs contained in an emergency drug supply unit are included in all inventories required under A.R.S. § 36-2523(B) and R4-23-1003(A).
- B. An emergency drug supply unit shall meet the following criteria:
  1. The drugs are necessary to meet the immediate and emergency therapeutic needs of long-term care facility residents as determined by the provider pharmacy's pharmacist-in-charge in consultation with the long-term care facility's medical director and nursing director;
  2. The purpose of the emergency drug supply unit in a long-term care facility is not to relieve a provider pharmacy of the responsibility for timely provision of the resident's routine drug needs, but to ensure that an emergency drug supply unit is available for facility residents in need of immediate and emergency therapeutic drugs; and
  3. The drugs are provided in a manufacturer's unit of use package or are prepackaged and labeled to include the drug name, strength, dosage form, manufacturer, lot number, and expiration date and provider pharmacy's name, address, telephone number, and pharmacist's initials.
- C. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that an emergency drug supply unit:
  1. Is stored in an area that:
    - a. Is temperature controlled; and
    - b. Prevents unauthorized access;
  2. Contains on the exterior of the emergency drug supply unit a label to indicate that the contents are for emergency use only;
  3. Contains on the exterior of the emergency drug supply unit a complete list of the contents of the unit by drug name, strength, dosage form, and quantity and the provider pharmacy's name, address, and telephone number;
  4. Contains on the exterior of the emergency drug supply unit a label that indicates the date of the earliest drug expiration date;
  5. Contains on the exterior of the emergency drug supply unit a label that indicates the date of and pharmacist responsible for the last inspection of the emergency drug supply unit; and
  6. Is secured with a tamper-evident seal, or is locked and sealed in a manner that obviously reveals when the unit has been opened or tampered with.
- D. The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
  1. Prepare, implement, review, and revise in the same manner described in R4-23-671(E) and comply with written policies and procedures for the storage and use of an emergency drug supply unit in a long-term care facility;
  2. Make the policies and procedures available in the provider pharmacy and long-term care facility for employee reference and inspection by the Board or its staff;
  3. Ensure that the written policies and procedures include the following:
    - a. Drug removal procedures that require:
      - i. The long-term care facility's personnel receive a valid prescription order for each drug removed from the emergency drug supply unit,
      - ii. The long-term care facility's personnel notify the provider pharmacy when a drug is removed from the emergency drug supply unit,
    - b. Outdated drug replacement procedures, and
    - c. Security and inspection procedures;

4. Exchange or restock the emergency drug supply unit weekly, or more often as necessary, to ensure the availability of an adequate supply of emergency drugs within the long-term care facility. Restocking of the emergency drug supply unit at the facility shall be completed by an Arizona licensed pharmacist employed by the provider pharmacy, or by an Arizona licensed intern, graduate intern, technician or technician trainee under the direct onsite supervision of an Arizona licensed pharmacist; and
  5. Educate pharmacy and long-term care facility personnel in the storage and use of an emergency drug supply unit.
- E.** In addition to the requirements of subsections (A) through (D), an automated emergency drug supply unit may be used provided:
1. The pharmacy permittee or pharmacist-in-charge of the provider pharmacy notifies the Board or its staff in writing of the intent to use an automated emergency drug supply unit, including the name and type of unit;
  2. The provider pharmacy is notified electronically when the automated emergency drug supply unit has been accessed;
  3. All events involving the access of the automated emergency drug supply unit are recorded electronically and maintained for not less than two years;
  4. The provider pharmacy is capable of producing a report of all transactions of the automated emergency drug supply unit including a single drug usage report as required in R4-23-408(B)(5) on inspection by the Board or its staff;
  5. The provider pharmacy develops written policies and procedures for:
    - a. Accessing the automated emergency drug supply unit in the event of a system malfunction or downtime,
    - b. Authorizing and modifying user access,
    - c. An ongoing quality assurance program that includes:
      - i. Training in the use of the automated emergency drug supply unit for all authorized users,
      - ii. Maintenance and calibration of the automated emergency drug supply unit as recommended by the device manufacturer; and
  6. Documentation of the requirements of subsection (E)(5)(c)(ii) is maintained for inspection by the Board or its staff for not less than two years.
- F.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge of a provider pharmacy from using an automated emergency drug supply unit if the pharmacy permittee or pharmacy permittee's employees do not comply with the requirements of subsections (A) through (E).

#### **Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1). Amended by final rulemaking at 12 A.A.R. 3032, effective October 1, 2006 (Supp. 06-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

#### **R4-23-701.03. Long-term Care Facilities Pharmacy Services: Emergency Drug Prescription Order**

The limited-service pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure that every emergency drug prescription order is evaluated according to the requirements of R4-23-402(A) by a pharmacist within 72 hours of the first dose of drug administered by long-term care facility personnel under the emergency drug prescription order.

#### **Historical Note**

Adopted effective December 18, 1992 (Supp. 92-4). Amended by final rulemaking at 9 A.A.R. 1064, effective May 4, 2003 (Supp. 03-1).

#### **R4-23-701.04. Long-term Care Facilities Pharmacy Services: Automated Dispensing Systems**

- A.** Before using an automated dispensing system as defined in R4-23-110, a pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Notify the Board or its staff in writing of the intent to use an automated dispensing system, including the name and type of system;
  2. Obtain a separate controlled substances registration at the location of each long-term care facility at which an automated dispensing system containing controlled substances will be located as required by federal law; and
  3. Maintain copies of the registrations required under subsection (A)(2) at the provider pharmacy for inspection by the Board or its staff.
- B.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure:
1. Drugs contained in an automated dispensing system remain the property of the provider pharmacy,
  2. Controlled substance drugs contained in an automated dispensing system are included in all inventories required under A.R.S. § 36-2523(B) and R4-23-1003(A),
  3. Schedule II drugs are not stocked in an automated dispensing system, and
  4. A separate emergency drug supply unit is available in the long-term care facility to meet the requirements of R4-23-701.02.
- C.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Ensure that policies and procedures as required in subsection (D) for the use of an automated dispensing system in a long-term care facility are prepared, implemented, and complied with;

2. Review biennially and, if necessary, revise the policies and procedures required under subsection (D);
  3. Document the review required under subsection (C)(2);
  4. Assemble the policies and procedures as a written or electronic manual; and
  5. Make the policies and procedures available for employee reference and inspection by the Board or its staff within the pharmacy and at any location outside of the pharmacy where the automated dispensing system is used.
- D.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall ensure the written policies and procedures include:
1. Drug removal procedures that include the following:
    - a. A drug is provided only by a valid prescription order for an individual long-term care facility resident;
    - b. A drug is dispensed from an automated dispensing system only after a pharmacist has:
      - i. Reviewed and verified the resident's prescription order as required by R4-23-402(A), and
      - ii. Electronically authorized the access for that drug for that particular resident, and
    - c. The automated dispensing system labels each individual drug packet with a resident specific label that complies with R4-23-701.01(2) and contains the resident's room number or facility identification number; and
  2. Security procedures that include the following:
    - a. The pharmacy permittee or pharmacist-in-charge of the provider pharmacy is responsible for authorizing user access, including adding and removing users and modifying user access;
    - b. Each authorized user is a licensee of the Board or authorized licensed personnel of the long-term care facility; and
    - c. The automated dispensing system is secured at the long-term care facility by electronic or mechanical means or a combination thereof designed to prevent unauthorized access;
  3. Drug stocking procedures that include the following:
    - a. Automated dispensing systems that use non-removable containers that do not allow prepackaging of the container as set out in subsection (D)(3)(b):
      - i. Are stocked at the long-term care facility by an Arizona licensed pharmacist employed by the provider pharmacy, or by an Arizona licensed intern, graduate intern, technician or technician trainee under the direct onsite supervision of an Arizona licensed pharmacist; and
      - ii. Utilize bar code or other technologies to ensure the correct drug is placed in the correct canister or container; and
    - b. Automated dispensing systems that use removable containers may be stocked at the long-term care facility by an authorized user provided:
      - i. The prepackaging of the container occurs at the provider pharmacy;
      - ii. A pharmacist verifies the container has been properly filled and labeled, and the container is secured with a tamper-evident seal;
      - iii. The individual containers are transported to the long-term care facility in a secure, tamper-evident shipping container; and
      - iv. The automated dispensing system uses microchip, bar-coding, or other technologies to ensure the containers are accurately loaded in the automated dispensing system; and
  4. Recordkeeping and report procedures that include the following:
    - a. All events involving the access of the automated dispensing system are recorded electronically and maintained for not less than two years;
    - b. The provider pharmacy is capable of producing a report of all transactions of the automated dispensing system including:
      - i. A single drug usage report that complies with R4-23-408(B)(5); and
      - ii. An authorized user history including date and time of access and type of transaction; and
    - c. The provider pharmacy has procedures to safeguard the storage, packaging, and distribution of drugs by monitoring:
      - i. Current inventory;
      - ii. Expiration dates;
      - iii. Controlled substance dispensing;
      - iv. Re-dispense requests; and
      - v. Wastage.
- E.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Ensure that an electronic log is kept for each container fill that includes:
    - a. An identification of the container by drug name and strength, and container number;
    - b. The drug's manufacturer or National Drug Code (NDC) number;
    - c. The expiration date and lot number from the manufacturer's stock bottle that is used to fill the container. If multiple lot numbers of the same drug are added to a container, each lot number and expiration date shall be documented;
    - d. The date the container is filled;
    - e. Documentation of the identity of the licensee who placed the drug into the container; and
    - f. If the licensee who filled the container is not a pharmacist, documentation of the identity of the pharmacist who supervised the non-pharmacist licensee; and

2. Maintain the electronic log for inspection by the Board or its staff for not less than two years.
- F.** A pharmacy permittee or pharmacist-in-charge of a provider pharmacy shall:
1. Implement an ongoing quality assurance program that monitors performance of the automated dispensing system and compliance with the established policies and procedures that includes:
    - a. Training in the use of the automated dispensing system for all authorized users,
    - b. Maintenance and calibration of the automated dispensing system as recommended by the device manufacturer,
    - c. Routine accuracy validation testing no less than every three months, and
    - d. Downtime and malfunction procedures to ensure the timely provision of medication to the long-term care facility resident, and
  2. Maintain documentation of the requirements of subsections (F)(1)(b) and (F)(1)(c) for inspection by the Board or its staff for not less than two years.
- G.** The Board may prohibit a pharmacy permittee or pharmacist-in-charge from using an automated dispensing system in a long-term care facility if the pharmacy permittee or the pharmacy permittee's employees do not comply with the requirements of subsections (A) through (F).

**Historical Note**

New Section made by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-702. Hospice Inpatient Facilities**

- A.** If a pharmacy permittee contracts to provide pharmacy services to the patients of a hospice inpatient facility as defined in R4-23-110, the pharmacy permittee shall ensure that:
1. A prescription medication is provided only by a valid prescription order for an individual hospice inpatient facility patient, properly labeled for that patient, as specified in this subsection. Nothing in this section shall prevent a provider pharmacy from supplying non-prescription drugs in a manufacturer's unopened container;
  2. A prescription medication label for a hospice inpatient facility patient complies with A.R.S. §§ 32-1968 and 36-2525 and contains:
    - a. The drug name, strength, dosage form, and quantity; and
    - b. The beyond-use date; and
  3. If the label on the hospice inpatient facility patient's drug container becomes damaged or soiled, a pharmacist employed by the pharmacy that dispensed the drug container, through the exercise of professional judgment, may relabel the drug container. Only a pharmacist is permitted to label a drug container or alter the label of a drug container.
- B.** A pharmacist may help hospice inpatient facility personnel develop written policies and procedures for the procurement, administration, storage, control, recordkeeping, and disposal of drugs in the facility.
- C.** The provider pharmacy may contract with the hospice inpatient facility to provide pharmacist services at the facility that include evaluation of the patient's response to medication therapy, identification of potential adverse drug reactions, and recommended appropriate corrective action.
- D.** A provider pharmacy that places an emergency drug supply unit at a hospice inpatient facility shall comply with the requirements of R4-23-701.02.
- E.** A pharmacy shall not place an automated dispensing system as defined in R4-23-701.04 in a hospice inpatient facility.
- F.** Drugs previously dispensed to a patient of the hospice inpatient facility by another pharmacy, and drugs previously dispensed by the provider pharmacy, shall not be repackaged.

**Historical Note**

Former Rules 6.8210, 6.8211, 6.8212, 6.8213, 6.8214, 6.8221, 6.8222, 6.8223, 6.8824, 6.8231, 6.8232, 6.8233, 6.8241, 6.8242, and 6.8243; Amended effective August 10, 1978 (Supp. 78-4). Repealed effective December 18, 1992 (Supp. 92-4). New Section made by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**R4-23-703. Assisted Living Facilities**

- A.** Before dispensing, selling, or delivering a prescription or nonprescription drug to an assisted living facility resident, a pharmacy permittee shall verify the assisted living facility has a current and active license issued by the Arizona Department of Health Services.
- B.** A pharmacy permittee shall ensure that, except as provided under subsection (C):
1. A controlled substance prescription drug is dispensed, sold, or delivered to an assisted living facility resident only after receiving a valid prescription order for the controlled substance prescription drug from the resident's medical practitioner; and
  2. The controlled substance prescription drug is labeled in accordance with A.R.S. §§ 32-1963.01, 32-1968, and 36-2525 and includes the beyond-use date on the label.
- C.** A pharmacy permittee may dispense, sell, or deliver to an assisted living facility resident a Schedule III, IV, or V controlled substance prescription if the pharmacy permittee:
1. Receives a written or oral prescription order for the Schedule III, IV, or V controlled substance from:
    - a. The resident's medical practitioner,

- b. An individual licensed by the Arizona Board of Nursing who is acting within the scope of practice of the individual's license, or
- c. The manager or a caregiver of the assisted living facility if the resident's medical practitioner has a written agreement with the assisted living facility designating a representative of the assisted living facility as an agent of the medical practitioner and a licensed medical practitioner provided the prescription order;
- 2. Complies with subsection (D)(2); and
- 3. Labels the Schedule III, IV, or V controlled substance as specified under subsection (B)(2).
- D.** A pharmacy permittee may dispense, sell, or deliver to an assisted living facility resident a non-controlled substance prescription or non-prescription drug if the pharmacy permittee:
  - 1. Receives a written or oral prescription order for the non-controlled substance prescription or non-prescription drug from:
    - a. The resident's medical practitioner,
    - b. An individual licensed by the Arizona Board of Nursing who is acting within the scope of practice of the individual's license, or
    - c. An assisted living facility manager or caregiver acting under the authority of a licensed medical practitioner;
  - 2. Determines the written or oral prescription order:
    - a. Meets the requirements of R4-23-407, and
    - b. Includes the name and title of the individual transmitting the prescription order; and
  - 3. Labels the non-narcotic prescription or non-prescription drug in accordance with A.R.S. §§ 32-1963.01 and 32-1968 and includes the beyond-use date on the label.
- E.** If the label on an assisted living facility resident's drug container becomes damaged or soiled, a pharmacist employed by the pharmacy permittee that dispensed the drug container, through the exercise of professional judgment, may relabel the drug container. Only a pharmacist is permitted to label a drug container or alter the label of a drug container.
- F.** A pharmacist may help assisted living facility personnel develop written policies and procedures regarding procuring, administering, storing, controlling, keeping records, and disposing of drugs in the facility and provide information concerning safe and effective supervision of drug self-administration.
- G.** A pharmacy permittee shall not place an emergency drug supply unit as described in R4-23-701.02 or an automated dispensing system as described in R4-23-701.04 in an assisted living facility.
- H.** A pharmacist shall not repackage a drug previously dispensed to an assisted living facility resident.

**Historical Note**

Former Rules 6.8310, 6.8320, 6.8330, 6.8340, 6.8350, 6.8360, and 6.8370; Amended effective August 10, 1978 (Supp. 78-4). Amended by final rulemaking at 5 A.A.R. 2561, effective July 16, 1999 (Supp. 99-3). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3). Amended by final rulemaking at 23 A.A.R. 2424, effective October 14, 2017 (Supp. 17-3).

**R4-23-704. Customized Patient Medication Packages**

In lieu of dispensing two or more prescribed drugs in separate containers, a pharmacist may, with the consent of the patient, the patient's caregiver, the prescriber, or the facility caring for the patient, provide a customized patient medication package. The pharmacist preparing a customized patient medication package shall abide by the guidelines set forth in the current edition of the official compendium for labeling, packaging, and recordkeeping, and state and federal law.

**Historical Note**

Former Rules 6.8410, 6.8411, 6.8412, 6.8413, 6.8414, 6.8415, 6.8416, and 6.8417. Section R4-23-704 repealed by final rulemaking at 5 A.A.R. 862, effective March 3, 1999 (Supp. 99-1). Amended by final rulemaking at 19 A.A.R. 2894, effective November 10, 2013 (Supp. 13-3).

**ARTICLE 9. PENALTIES AND MISCELLANEOUS**

**R4-23-901. Penalty for Violations**

Any person, firm, or corporation violating any provision of 4 A.A.C. 23 is subject to the penalties in A.R.S. § 32-1996. In addition, a license or permit issued under the provisions of A.R.S. Title 32, Chapter 18 is subject to suspension or revocation for violation of 4 A.A.C. 23.

**Historical Note**

Former Rule 9.0000. Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

**ARTICLE 10. UNIFORM CONTROLLED SUBSTANCES AND DRUG OFFENSES**

**R4-23-1003. Records and Order Forms**

- A.** Records.

1. If the pharmacist-in-charge of a pharmacy is replaced by another pharmacist-in-charge, the new pharmacist-in-charge shall complete an inventory of all controlled substances in the pharmacy within 10 days of assuming the responsibility. This inventory and any other required controlled substance inventory shall:
    - a. Include an exact count of all Schedule II controlled substances;
    - b. Include an exact count of all Schedule III through Schedule V controlled substances or an estimated count if the stock container contains fewer than 1001 units;
    - c. Indicate the date the inventory is taken and whether the inventory is taken before opening of business or after close of business for the pharmacy;
    - d. Be signed by:
      - i. The pharmacist-in-charge; or
      - ii. For other required inventories, the pharmacist who does the inventory;
    - e. Be kept separately from all other records; and
    - f. Be available in the pharmacy for inspection by the Board or its designee for not less than three years.
  2. A loss of a controlled substance shall be reported:
    - a. Within 10 days of discovery;
    - b. On a DEA form 106;
    - c. By the pharmacist-in-charge of a pharmacy or a manufacturer;
    - d. By the permittee or designated representative of a full-service wholesaler; and
    - e. To the federal Drug Enforcement Administration (DEA), the Narcotic Division of the Department of Public Safety (DPS), and the Board of Pharmacy. A copy of the DEA form 106 shall be kept on file by the pharmacy permittee. The DEA form 106 shall state whether the police investigated the loss.
  3. Every person manufacturing any controlled substance, including repackaging or relabeling, shall record and retain for not less than three years the manufacturing, repackaging, or relabeling date for each controlled substance.
  4. Every person receiving, selling, delivering, or disposing of any controlled substance shall record and retain for not less than three years the following information:
    - a. The name, strength, dosage form, and quantity of each controlled substance received, sold, delivered, or disposed;
    - b. The name, address, and DEA registration number of the person from whom each controlled substance is received;
    - c. The name, address, and DEA registration number of the person to whom each controlled substance is sold or delivered or who disposes of each controlled substance; and
    - d. The date of each transaction.
  5. A full-service drug wholesale permittee or the designated representative shall complete an inventory of all controlled substances in the manner prescribed in subsection (A)(1). The permittee or designated representative shall conduct this inventory:
    - a. On May 1 of each year or as directed by the Board; and
    - b. If there is a change of ownership, or discontinuance of business, or within 10 days of a change of a designated representative.
  6. A drug manufacturer permittee or the pharmacist-in-charge shall complete an inventory of all controlled substances in the manner prescribed in subsection (A)(1). The permittee or pharmacist-in-charge shall conduct this inventory:
    - a. On May 1 of each year or as directed by the Board; and
    - b. If there is a change of ownership, or discontinuance of business, or within 10 days of a change of a pharmacist-in-charge.
- B.** Order form. For purposes of A.R.S. § 36-2524, "Order Form" means DEA Form 222c.

#### **Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Amended effective November 1, 1993 (Supp. 93-4). Amended effective April 1, 1995; filed January 31, 1995 (Supp. 95-1). Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3). Amended by final rulemaking at 12 A.A.R. 1912, effective July 1, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3670, effective November 8, 2008 (Supp. 08-3).

#### **R4-23-1005. Substances Excepted from the Schedules of Controlled Substances**

- A.** All over-the-counter non-narcotic substances containing limited amounts of controlled substances that are excluded from all controlled substance schedules by 21 CFR 1308.22 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.
- B.** All chemical preparations or mixtures containing one or more controlled substances listed in any schedule that are exempted from all controlled substance schedules by 21 CFR 1308.24 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.
- C.** All prescription-only drugs that are exempted by 21 CFR 1308.32 (Revised April 1, 2012, incorporated by reference and on file with the Board. This incorporated material contains no future editions or amendments.), are excluded from all controlled substance schedules in Arizona.

#### **Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000

(Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 2609, effective December 2, 2012 (Supp. 12-4).

**R4-23-1006. Substances Excepted from Drug Offenses**

The following materials, compounds, mixtures, or preparations containing any stimulant or depressant substance included in A.R.S. §§ 13-3401(6)(b) or 13-3401(6)(c) are excepted from the definition of dangerous drugs under the authority of A.R.S. § 32-1904(B)(14):

1. Over-the-counter drugs excepted in R4-23-1005(A).
2. Chemical preparations excepted in R4-23-1005(B).
3. Prescription-only drugs excepted in R4-23-1005(C).

**Historical Note**

Adopted effective August 2, 1982 (Supp. 82-4). Amended by final rulemaking at 6 A.A.R. 3177, effective August 3, 2000 (Supp. 00-3).

As of October 21, 2019

### 32-1901. Definitions

In this chapter, unless the context otherwise requires:

1. "Administer" means the direct application of a controlled substance, prescription-only drug, dangerous drug or narcotic drug, whether by injection, inhalation, ingestion or any other means, to the body of a patient or research subject by a practitioner or by the practitioner's authorized agent or the patient or research subject at the direction of the practitioner.
2. "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices, poisons or hazardous substances.
3. "Advisory letter" means a nondisciplinary letter to notify a licensee or permittee that either:
  - (a) While there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee or permittee.
  - (b) The violation is a minor or technical violation that is not of sufficient merit to warrant disciplinary action.
  - (c) While the licensee or permittee has demonstrated substantial compliance through rehabilitation, remediation or reeducation that has mitigated the need for disciplinary action, the board believes that repetition of the activities that led to the investigation may result in further board action against the licensee or permittee.
4. "Antiseptic", if a drug is represented as such on its label, means a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment or dusting powder or other use that involves prolonged contact with the body.
5. "Authorized officers of the law" means legally empowered peace officers, compliance officers of the board of pharmacy and agents of the division of narcotics enforcement and criminal intelligence of the department of public safety.
6. "Automated prescription-dispensing kiosk" means a mechanical system that is operated as an extension of a pharmacy, that maintains all transaction information within the pharmacy operating system, that is separately permitted from the pharmacy and that performs operations that either:
  - (a) Accept a prescription or refill order, store prepackaged or repackaged medications, label and dispense patient-specific prescriptions and provide counseling on new or refilled prescriptions.
  - (b) Dispense or deliver a prescription or refill that has been prepared by or on behalf of the pharmacy that oversees the automated prescription-dispensing kiosk.
7. "Board" or "board of pharmacy" means the Arizona state board of pharmacy.

8. "Certificate of composition" means a list of a product's ingredients.
9. "Certificate of free sale" means a document that authenticates a product that is generally and freely sold in domestic or international channels of trade.
10. "Color additive" means a material that either:
- (a) Is any dye, pigment or other substance made by a process of synthesis or similar artifice, or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from any vegetable, animal, mineral or other source.
  - (b) If added or applied to a drug, or to the human body or any part of the human body, is capable of imparting color, except that color additive does not include any material that has been or may be exempted under the federal act. Color includes black, white and intermediate grays.
11. "Compounding" means the preparation, mixing, assembling, packaging or labeling of a drug by a pharmacist or an intern or pharmacy technician under the pharmacist's supervision, for the purpose of dispensing to a patient based on a valid prescription order. Compounding includes the preparation of drugs in anticipation of prescription orders prepared on routine, regularly observed prescribing patterns and the preparation of drugs as an incident to research, teaching or chemical analysis or for administration by a medical practitioner to the medical practitioner's patient and not for sale or dispensing. Compounding does not include the preparation of commercially available products from bulk compounds or the preparation of drugs for sale to pharmacies, practitioners or entities for the purpose of dispensing or distribution.
12. "Compressed medical gas distributor" means a person who holds a current permit issued by the board to distribute compressed medical gases pursuant to a compressed medical gas order to compressed medical gas suppliers and other entities that are registered, licensed or permitted to use, administer or distribute compressed medical gases.
13. "Compressed medical gases" means gases and liquid oxygen that a compressed medical gas distributor or manufacturer has labeled in compliance with federal law.
14. "Compressed medical gas order" means an order for compressed medical gases that is issued by a medical practitioner.
15. "Compressed medical gas supplier" means a person who holds a current permit issued by the board to supply compressed medical gases pursuant to a compressed medical gas order and only to the consumer or the patient.
16. "Controlled substance" means a drug, substance or immediate precursor that is identified, defined or listed in title 36, chapter 27, article 2.
17. "Corrosive" means any substance that when it comes in contact with living tissue will cause destruction of tissue by chemical action.
18. "Counterfeit drug" means a drug that, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, number or device, or any likeness of

these, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed that drug.

19. "Dangerous drug" has the same meaning prescribed in section 13-3401.

20. "Day" means a business day.

21. "Decree of censure" means an official action that is taken by the board and that may include a requirement for restitution of fees to a patient or consumer.

22. "Deliver" or "delivery" means the actual, constructive or attempted transfer from one person to another whether or not there is an agency relationship.

23. "Deputy director" means a pharmacist who is employed by the board and selected by the executive director to perform duties as prescribed by the executive director.

24. "Device", except as used in paragraph 18 of this section, section 32-1965, paragraph 4 and section 32-1967, subsection A, paragraph 15 and subsection C, means instruments, apparatuses and contrivances, including their components, parts and accessories, including all such items under the federal act, intended either:

(a) For use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(b) To affect the structure or any function of the human body or other animals.

25. "Director" means the director of the division of narcotics enforcement and criminal investigation of the department of public safety.

26. "Direct supervision of a pharmacist" means the pharmacist is present. If relating to the sale of certain items, direct supervision of a pharmacist means that a pharmacist determines the legitimacy or advisability of a proposed purchase of those items.

27. "Dispense" means to deliver to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling or compounding necessary to prepare for that delivery.

28. "Dispenser" means a practitioner who dispenses.

29. "Distribute" means to deliver, other than by administering or dispensing.

30. "Distributor" means a person who distributes.

31. "Drug" means:

(a) Articles recognized, or for which standards or specifications are prescribed, in the official compendium.

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in the human body or other animals.

(c) Articles other than food intended to affect the structure or any function of the human body or other animals.

(d) Articles intended for use as a component of any articles specified in subdivision (a), (b) or (c) of this paragraph but does not include devices or their components, parts or accessories.

32. "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

33. "Drug or device manufacturing" means the production, preparation, propagation or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical synthesis and includes any packaging or repackaging of substances or labeling or relabeling of its container and the promotion and marketing of the same. Drug or device manufacturing does not include compounding.

34. "Economic poison" means any substance that alone, in chemical combination with or in formulation with one or more other substances is a pesticide within the meaning of the laws of this state or the federal insecticide, fungicide and rodenticide act and that is used in the production, storage or transportation of raw agricultural commodities.

35. "Enteral feeding" means nourishment provided by means of a tube inserted into the stomach or intestine.

36. "Established name", with respect to a drug or ingredient of a drug, means any of the following:

(a) The applicable official name.

(b) If there is no such name and the drug or ingredient is an article recognized in an official compendium, the official title in an official compendium.

(c) If neither subdivision (a) nor (b) of this paragraph applies, the common or usual name of the drug.

37. "Executive director" means the executive director of the board of pharmacy.

38. "Federal act" means the federal laws and regulations that pertain to drugs, devices, poisons and hazardous substances and that are official at the time any drug, device, poison or hazardous substance is affected by this chapter.

39. "Full service wholesale permittee":

(a) Means a permittee who may distribute prescription-only drugs and devices, controlled substances and over-the-counter drugs and devices to pharmacies or other legal outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

40. "Good manufacturing practice" means a system for ensuring that products are consistently produced and controlled according to quality standards and covering all aspects of design, monitoring and control of manufacturing processes and facilities to ensure that products do not pose any risk to the consumer or public.

41. "Highly toxic" means any substance that falls within any of the following categories:

(a) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, at a single dose of fifty milligrams or less per kilogram of body weight, when orally administered.

(b) Produces death within fourteen days in half or more than half of a group of ten or more laboratory white rats each weighing between two hundred and three hundred grams, if inhaled continuously for a period of one hour or less at an atmospheric concentration of two hundred parts per million by volume or less of gas or vapor or two milligrams per liter by volume or less of mist or dust, provided the concentration is likely to be encountered by humans if the substance is used in any reasonably foreseeable manner.

(c) Produces death within fourteen days in half or more than half of a group of ten or more rabbits tested in a dosage of two hundred milligrams or less per kilogram of body weight, if administered by continuous contact with the bare skin for twenty-four hours or less.

If the board finds that available data on human experience with any substance indicate results different from those obtained on animals in the dosages or concentrations prescribed in this paragraph, the human data shall take precedence.

42. "Hospital" means any institution for the care and treatment of the sick and injured that is approved and licensed as a hospital by the department of health services.

43. "Intern" means a pharmacy intern.

44. "Internship" means the practical, experiential, hands-on training of a pharmacy intern under the supervision of a preceptor.

45. "Irritant" means any substance, other than a corrosive, that on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction.

46. "Jurisprudence examination" means a board-approved pharmacy law examination that is written and administered in cooperation with the national association of boards of pharmacy or another board-approved pharmacy law examination.

47. "Label" means a display of written, printed or graphic matter on the immediate container of any article that, unless easily legible through the outside wrapper or container, also appears on the outside wrapper or container of the article's retail package. For the purposes of this paragraph, the immediate container does not include package liners.

48. "Labeling" means all labels and other written, printed or graphic matter either:

(a) On any article or any of its containers or wrappers.

(b) Accompanying that article.

49. "Letter of reprimand" means a disciplinary letter that is a public document issued by the board and that informs a licensee or permittee that the licensee's or permittee's conduct violates state or federal law and may require the board to monitor the licensee or permittee.

50. "Limited service pharmacy" means a pharmacy that is approved by the board to practice a limited segment of pharmacy as indicated by the permit issued by the board.

51. "Manufacture" or "manufacturer":

(a) Means every person who prepares, derives, produces, compounds, processes, packages or repackages or labels any drug in a place, other than a pharmacy, that is devoted to manufacturing the drug.

(b) Includes a virtual manufacturer as defined in rule by the board.

52. "Marijuana" has the same meaning prescribed in section 13-3401.

53. "Medical practitioner" means any medical doctor, doctor of osteopathic medicine, dentist, podiatrist, veterinarian or other person who is licensed and authorized by law to use and prescribe drugs and devices for the treatment of sick and injured human beings or animals or for the diagnosis or prevention of sickness in human beings or animals in this state or any state, territory or district of the United States.

54. "Medication order" means a written or verbal order from a medical practitioner or that person's authorized agent to administer a drug or device.

55. "Narcotic drug" has the same meaning prescribed in section 13-3401.

56. "New drug" means either:

(a) Any drug the composition of which is such that the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling.

(b) Any drug the composition of which is such that the drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but that has not, other than in the investigations, been used to a material extent or for a material time under those conditions.

57. "Nonprescription drug" or "over-the-counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and that is prepackaged and labeled for use by the consumer in accordance with the requirements of the laws of this state and federal law. Nonprescription drug does not include:

(a) A drug that is primarily advertised and promoted professionally to medical practitioners and pharmacists by manufacturers or primary distributors.

(b) A controlled substance.

(c) A drug that is required to bear a label that states "Rx only".

(d) A drug that is intended for human use by hypodermic injection.

58. "Nonprescription drug wholesale permittee":

(a) Means a permittee who may distribute only over-the-counter drugs and devices to pharmacies or other lawful outlets from a place devoted in whole or in part to wholesaling these items.

(b) Includes a virtual wholesaler as defined in rule by the board.

59. "Notice" means personal service or the mailing of a copy of the notice by certified mail addressed either to the person at the person's latest address of record in the board office or to the person's attorney.

60. "Nutritional supplementation" means vitamins, minerals and caloric supplementation. Nutritional supplementation does not include medication or drugs.

61. "Official compendium" means the latest revision of the United States pharmacopeia and the national formulary or any current supplement.

62. "Other jurisdiction" means one of the other forty-nine states, the District of Columbia, the Commonwealth of Puerto Rico or a territory of the United States of America.

63. "Package" means a receptacle defined or described in the United States pharmacopeia and the national formulary as adopted by the board.

64. "Packaging" means the act or process of placing a drug item or device in a container for the purpose or intent of dispensing or distributing the item or device to another.

65. "Parenteral nutrition" means intravenous feeding that provides a person with fluids and essential nutrients the person needs while the person is unable to receive adequate fluids or feedings by mouth or by enteral feeding.

66. "Person" means an individual, partnership, corporation and association, and their duly authorized agents.

67. "Pharmaceutical care" means the provision of drug therapy and other pharmaceutical patient care services.

68. "Pharmacist" means an individual who is currently licensed by the board to practice the profession of pharmacy in this state.

69. "Pharmacist in charge" means the pharmacist who is responsible to the board for a licensed establishment's compliance with the laws and administrative rules of this state and of the federal government pertaining to the practice of pharmacy, the manufacturing of drugs and the distribution of drugs and devices.

70. "Pharmacist licensure examination" means a board-approved examination that is written and administered in cooperation with the national association of boards of pharmacy or any other board-approved pharmacist licensure examination.

71. "Pharmacy":

(a) Means:

(i) Any place where drugs, devices, poisons or related hazardous substances are offered for sale at retail.

(ii) Any place in which the profession of pharmacy is practiced or where prescription orders are compounded and dispensed.

(iii) Any place that has displayed on it or in it the words "pharmacist", "pharmaceutical chemist", "apothecary", "druggist", "pharmacy", "drugstore", "drugs" or "drug sundries" or any of these words or combinations of these words, or words of similar import either in English or any other language, or that is advertised by any sign containing any of these words.

(iv) Any place where the characteristic symbols of pharmacy or the characteristic prescription sign "Rx" is exhibited.

(v) Any place or a portion of any building or structure that is leased, used or controlled by the permittee to conduct the business authorized by the board at the address for which the permit was issued and that is enclosed and secured when a pharmacist is not in attendance.

(vi) A remote dispensing site pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

(b) Includes a satellite pharmacy.

72. "Pharmacy intern" means a person who has all of the qualifications and experience prescribed in section 32-1923.

73. "Pharmacy technician" means a person who is licensed pursuant to this chapter.

74. "Pharmacy technician trainee" means a person who is licensed pursuant to this chapter.

75. "Poison" or "hazardous substance" includes, but is not limited to, any of the following if intended and suitable for household use or use by children:

(a) Any substance that, according to standard works on medicine, pharmacology, pharmacognosy or toxicology, if applied to, introduced into or developed within the body in relatively small quantities by its inherent action uniformly produces serious bodily injury, disease or death.

(b) A toxic substance.

(c) A highly toxic substance.

(d) A corrosive substance.

(e) An irritant.

(f) A strong sensitizer.

(g) A mixture of any of the substances described in this paragraph, if the substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children.

(h) A substance that is designated by the board to be a poison or hazardous substance. This subdivision does not apply to radioactive substances, economic poisons subject to the federal insecticide, fungicide and rodenticide act or the state pesticide act, foods, drugs and cosmetics subject to state laws or the federal act or substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house. This subdivision applies to any substance or article that is not itself an economic poison within the meaning of the federal insecticide, fungicide and rodenticide act or the state pesticide act, but that is a poison or hazardous substance within the meaning of this paragraph by reason of bearing or containing an economic poison or hazardous substance.

76. "Practice of pharmacy":

(a) Means furnishing the following health care services as a medical professional:

(i) Interpreting, evaluating and dispensing prescription orders in the patient's best interests.

(ii) Compounding drugs pursuant to or in anticipation of a prescription order.

(iii) Labeling drugs and devices in compliance with state and federal requirements.

(iv) Participating in drug selection and drug utilization reviews, drug administration, drug or drug-related research and drug therapy monitoring or management.

(v) Providing patient counseling necessary to provide pharmaceutical care.

(vi) Properly and safely storing drugs and devices in anticipation of dispensing.

(vii) Maintaining required records of drugs and devices.

(viii) Offering or performing acts, services, operations or transactions necessary in the conduct, operation, management and control of a pharmacy.

(ix) Initiating, monitoring and modifying drug therapy pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970.

(x) Initiating and administering immunizations or vaccines pursuant to section 32-1974.

(b) Does not include initiating a prescription order for any medication, drug or other substance used to induce or cause a medication abortion as defined in section 36-2151.

77. "Practitioner" means any physician, dentist, veterinarian, scientific investigator or other person who is licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state, or any pharmacy, hospital or other institution that is licensed, registered or otherwise permitted to distribute,

dispense, conduct research with respect to or administer a controlled substance in the course of professional practice or research in this state.

78. "Preceptor" means a pharmacist who is serving as the practical instructor of an intern and complies with section 32-1923.

79. "Precursor chemical" means a substance that is:

(a) The principal compound that is commonly used or that is produced primarily for use and that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(b) Listed in section 13-3401, paragraph 26 or 27.

80. "Prescription" means either a prescription order or a prescription medication.

81. "Prescription medication" means any drug, including label and container according to context, that is dispensed pursuant to a prescription order.

82. "Prescription-only device" includes:

(a) Any device that is limited by the federal act to use under the supervision of a medical practitioner.

(b) Any device required by the federal act to bear on its label essentially the legend "Rx only".

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

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

(b) Any drug that is limited by an approved new drug application under the federal act or section 32-1962 to use under the supervision of a medical practitioner.

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

(d) Any drug, other than a controlled substance, required by the federal act to bear on its label the legend "Rx only".

84. "Prescription order" means any of the following:

(a) An order to a pharmacist for drugs or devices issued and signed by a duly licensed medical practitioner in the authorized course of the practitioner's professional practice.

(b) An order transmitted to a pharmacist through word of mouth, telephone or other means of communication directed by that medical practitioner. Prescription orders received by word of mouth, telephone or other means of communication shall be maintained by the pharmacist pursuant to section 32-

1964, and the record so made by the pharmacist constitutes the original prescription order to be dispensed by the pharmacist. This paragraph does not alter or affect laws of this state or any federal act requiring a written prescription order.

(c) An order initiated by a pharmacist pursuant to a protocol-based drug therapy agreement with a provider as outlined in section 32-1970, or immunizations or vaccines administered by a pharmacist pursuant to section 32-1974.

(d) A diet order or an order for enteral feeding, nutritional supplementation or parenteral nutrition that is initiated by a registered dietitian or other qualified nutrition professional in a hospital pursuant to section 36-416.

85. "Professionally incompetent" means:

(a) Incompetence based on a variety of factors, including a lack of sufficient pharmaceutical knowledge or skills or experience to a degree likely to endanger the health of patients.

(b) When considered with other indications of professional incompetence, a pharmacist or pharmacy intern who fails to obtain a passing score on a board-approved pharmacist licensure examination or a pharmacy technician or pharmacy technician trainee who fails to obtain a passing score on a board-approved pharmacy technician licensure examination.

86. "Radioactive substance" means a substance that emits ionizing radiation.

87. "Remote dispensing site pharmacy" means a pharmacy where a pharmacy technician or pharmacy intern prepares, compounds or dispenses prescription medications under remote supervision by a pharmacist.

88. "Remote supervision by a pharmacist" means that a pharmacist directs and controls the actions of pharmacy technicians and pharmacy interns through the use of audio and visual technology.

89. "Revocation" or "revoke" means the official cancellation of a license, permit, registration or other approval authorized by the board for a period of two years unless otherwise specified by the board. A request or new application for reinstatement may be presented to the board for review before the conclusion of the specified revocation period upon review of the executive director.

90. "Safely engage in employment duties" means that a permittee or the permittee's employee is able to safely engage in employment duties related to the manufacture, sale, distribution or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals.

91. "Satellite pharmacy" means a work area located within a hospital or on a hospital campus that is not separated by other commercial property or residential property, that is under the direction of a pharmacist, that is a remote extension of a centrally licensed hospital pharmacy and that is owned by and dependent on the centrally licensed hospital pharmacy for administrative control, staffing and drug procurement and that is not required to be separately permitted.

92. "Symbol" means the characteristic symbols that have historically identified pharmacy, including show globes and mortar and pestle, and the sign "Rx".

93. "Third-party logistics provider" means an entity that provides or coordinates warehousing or other logistics services for a prescription or over-the-counter dangerous drug or dangerous device in intrastate or interstate commerce on behalf of a manufacturer, wholesaler or dispenser of the prescription or over-the-counter dangerous drug or dangerous device but that does not take ownership of the prescription or over-the-counter dangerous drug or dangerous device or have responsibility to direct its sale or disposition.

94. "Toxic substance" means a substance, other than a radioactive substance, that has the capacity to produce injury or illness in humans through ingestion, inhalation or absorption through any body surface.

95. "Ultimate user" means a person who lawfully possesses a drug or controlled substance for that person's own use, for the use of a member of that person's household or for administering to an animal owned by that person or by a member of that person's household.

### 32-1901.01. Definition of unethical and unprofessional conduct; permittees; licensees

A. In this chapter, unless the context otherwise requires, for the purposes of disciplining a permittee, "unethical conduct" means the following, whether occurring in this state or elsewhere:

1. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
2. Committing an act that is substantially related to the qualifications, functions or duties of a permittee and that demonstrates either a lack of good moral character or an actual or potential unfitness to hold a permit in light of the public's safety.
3. Working under the influence of alcohol or other drugs.
4. Being addicted to the use of alcohol or other drugs to such a degree as to render the permittee unfit to perform the permittee's employment duties.
5. Violating a federal or state law or administrative rule relating to the manufacture, sale or distribution of drugs, devices, poisons, hazardous substances or precursor chemicals.
6. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals.
7. Violating state or federal reporting or recordkeeping requirements on transactions relating to precursor chemicals.
8. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy.
9. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

10. Failing to report in writing to the board any evidence that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties related to manufacturing, selling, distributing or dispensing of drugs, devices, poisons, hazardous substances, controlled substances or precursor chemicals or is or may be in violation of this chapter or a rule adopted under this chapter.
11. Intending to sell, transfer or distribute, or to offer for sale, transfer or distribution, or selling, transferring, distributing or dispensing or offering for sale, transfer or distribution an imitation controlled substance, imitation over-the-counter drug or imitation prescription-only drug as defined in section 13-3451.
12. Having the permittee's permit to manufacture, sell, distribute or dispense drugs, devices, poisons, hazardous substances or precursor chemicals denied or disciplined in another jurisdiction.
13. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.
14. Obtaining or attempting to obtain a permit or a permit renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.
15. Wilfully making a false report or record required by this chapter, required by federal or state laws pertaining to drugs, devices, poisons, hazardous substances or precursor chemicals or required for the payment for drugs, devices, poisons or hazardous substances or precursor chemicals or for services pertaining to such drugs or substances.
16. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.
17. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.
18. Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, this chapter.
19. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.
20. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.
21. Failing to provide the board or its employees or agents or an authorized federal or state official conducting a site investigation, inspection or audit with access to any place for which a permit has been issued or for which an application for a permit has been submitted.
22. Failing to notify the board of a change of ownership, management or pharmacist in charge.
23. Failing to promptly produce on the request of the official conducting a site investigation, inspection or audit any book, record or document.

24. Overruling or attempting to overrule a pharmacist in matters of pharmacy ethics or interpreting laws pertaining to the practice of pharmacy or the distribution of drugs or devices.

25. Distributing premiums or rebates of any kind in connection with the sale of prescription medication, other than to the prescription medication recipient.

26. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

27. Fraudulently claiming to have performed a service.

28. Fraudulently charging a fee for a service.

29. Advertising drugs or devices, or services pertaining to drugs or devices, in a manner that is untrue or misleading in any particular, and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading.

B. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacist or pharmacy intern, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Being addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit to practice the profession of pharmacy.

2. Violating any federal or state law, rule or regulation relating to the manufacture or distribution of drugs and devices or the practice of pharmacy.

3. Dispensing a different drug or brand of drug in place of the drug or brand of drug ordered or prescribed without the express permission in each case of the orderer, or in the case of a prescription order, the medical practitioner. The conduct prohibited by this paragraph does not apply to substitutions authorized pursuant to section 32-1963.01.

4. Obtaining or attempting to obtain a license to practice pharmacy or a license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.

5. Having the licensee's license to practice pharmacy denied or disciplined in another jurisdiction.

6. Claiming professional superiority in compounding or dispensing prescription orders.

7. Failing to comply with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937 and rules adopted by the board.

8. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

9. Working under the influence of alcohol or other drugs.

10. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.

11. Knowingly dispensing a drug without a valid prescription order as required pursuant to section 32-1968, subsection A.

12. Knowingly dispensing a drug on a prescription order that was issued in the course of the conduct of business of dispensing drugs pursuant to diagnosis by mail or the internet, unless the order was any of the following:

(a) Made by a physician who provides temporary patient supervision on behalf of the patient's regular treating licensed health care professional or provides a consultation requested by the patient's regular treating licensed health care professional.

(b) Made in an emergency medical situation as defined in section 41-1831.

(c) Written to prepare a patient for a medical examination.

(d) Written or the prescription medications were issued for use by a county or tribal public health department for immunization programs or emergency treatment or in response to an infectious disease investigation, a public health emergency, an infectious disease outbreak or an act of bioterrorism. For the purposes of this subdivision, "bioterrorism" has the same meaning prescribed in section 36-781.

(e) Written or antimicrobials were dispensed by the prescribing or dispensing physician to a contact as defined in section 36-661 who is believed to have had significant exposure risk as defined in section 36-661 with another person who has been diagnosed with a communicable disease as defined in section 36-661.

(f) Written or the prescription medications were issued for administration of immunizations or vaccines listed in the United States centers for disease control and prevention's recommended immunization schedule to a household member of a patient.

(g) For epinephrine auto-injectors that are written or dispensed for a school district or charter school and that are to be stocked for emergency use pursuant to section 15-157 or for an authorized entity to be stocked pursuant to section 36-2226.01.

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

(i) Written pursuant to a physical or mental health status examination that was conducted during a real-time telemedicine encounter with audio and video capability.

(j) For naloxone hydrochloride or any other opioid antagonist approved by the United States food and drug administration and written or dispensed for use pursuant to section 36-2228 or 36-2266.

13. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of pharmacy.

14. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

15. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be in violation of this chapter or a rule adopted under this chapter.

16. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.

17. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.

18. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.

19. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.

20. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.

21. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.

22. Refusing without just cause to allow authorized agents of the board to examine documents that are required to be kept pursuant to this chapter or title 36.

23. Participating in an arrangement or agreement to allow a prescription order or a prescription medication to be left at, picked up from, accepted by or delivered to a place that is not licensed as a pharmacy. This paragraph does not prohibit a pharmacist or a pharmacy from using an employee or a common carrier to pick up prescription orders at or deliver prescription medications to the office or home of a medical practitioner, the residence of a patient or a patient's hospital.

24. Paying rebates or entering into an agreement for the payment of rebates to a medical practitioner or any other person in the health care field.

25. Providing or causing to be provided to a medical practitioner prescription order blanks or forms bearing the pharmacist's or pharmacy's name, address or other means of identification.

26. Fraudulently claiming to have performed a professional service.

27. Fraudulently charging a fee for a professional service.
28. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.
29. Failing to report a change in the licensee's residency status as required by section 32-1926.01.
30. Failing to maintain effective controls against the diversion of controlled substances or precursor chemicals to unauthorized persons or entities.

C. In this chapter, unless the context otherwise requires, for the purposes of disciplining a pharmacy technician or pharmacy technician trainee, "unprofessional conduct" means the following, whether occurring in this state or elsewhere:

1. Being addicted to the use of alcohol or other drugs to such a degree as to render the licensee unfit to perform the licensee's employment duties.
2. Violating a federal or state law or administrative rule relating to the manufacture or distribution of drugs or devices.
3. Obtaining or attempting to obtain a pharmacy technician or pharmacy technician trainee license or a pharmacy technician license renewal by fraud, by misrepresentation or by knowingly taking advantage of the mistake of another person or an agency.
4. Having the licensee's license to practice as a pharmacy technician denied or disciplined in another jurisdiction.
5. Failing to comply with the mandatory continuing professional education requirements of section 32-1925, subsection H and rules adopted by the board.
6. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude or any drug-related offense. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
7. Working under the influence of alcohol or other drugs.
8. Violating a federal or state law or administrative rule relating to marijuana, prescription-only drugs, narcotics, dangerous drugs, controlled substances or precursor chemicals when determined by the board or by conviction in a federal or state court.
9. Failing to report in writing to the board any evidence that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of pharmacy.
10. Failing to report in writing to the board any evidence that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee.

11. Failing to report in writing to the board any evidence that a permittee or a permittee's employee is or may be guilty of unethical conduct or is or may be in violation of this chapter or a rule adopted under this chapter.
12. Committing an offense in another jurisdiction that if committed in this state would be grounds for discipline.
13. Knowingly filing with the board any application, renewal or other document that contains false or misleading information.
14. Providing false or misleading information or omitting material information in any communication to the board or the board's employees or agents.
15. Violating or attempting to violate, directly or indirectly, or assisting in or abetting in the violation of, or conspiring to violate, this chapter.
16. Violating a formal order, terms of probation, a consent agreement or a stipulation issued or entered into by the board or its executive director pursuant to this chapter.
17. Failing to comply with a board subpoena or failing to comply in a timely manner with a board subpoena without providing any explanation to the board for not complying with the subpoena.
18. Failing to report a change of the licensee's home address, contact information, employer or employer's address as required by section 32-1926.
19. Failing to report a change in the licensee's residency status as required by section 32-1926.01.

**32-1902. [Arizona state board of pharmacy; immunity](#)**

A. The Arizona state board of pharmacy is established consisting of the following members who are appointed by the governor:

1. Six pharmacists at least one of whom is a pharmacist employed by a licensed hospital and at least one of whom is employed by a community pharmacy and engaged in the day-to-day practice of pharmacy.
2. One pharmacy technician.
3. Two public members.

B. To be qualified for appointment:

1. A pharmacist must be licensed as a pharmacist in this state or any other jurisdiction for a period of at least ten years and licensed as a pharmacist and a resident in this state for a period of at least five years immediately before the date of appointment.
2. Each public member must be a resident of this state for a period of at least five years immediately before the date of appointment.

3. A pharmacy technician must be a practicing pharmacy technician in this state or any other jurisdiction for at least five years and be licensed as a pharmacy technician and a resident of this state for at least five years immediately before the date of appointment. A pharmacy technician appointed before July 1, 2009 does not have to meet the minimum five year licensure requirement of this paragraph.

C. Each pharmacist and pharmacy technician member shall serve for a term of five years. Public members may serve for a term of five years unless removed by the governor. The public members shall after the first of every year present a written report to the governor. Vacancies occurring on the board other than by expiration of term of office shall be filled for the unexpired portion of the term only.

D. On or before January 15 of each year in which a pharmacist or a pharmacy technician is to be appointed, the executive director of the pharmacy association of Arizona may submit to the governor a list of the names of at least seven of its members who have been nominated by the association, and who meet the requirements as provided in this section for the next occurring vacancy on the board. The governor may make appointments of licensed pharmacists and pharmacy technicians to the board from the nominees on the list or from others having the necessary qualifications.

E. Appointees to the board within thirty days after their appointment shall take and subscribe to an oath or affirmation, before a properly qualified officer, that they will faithfully and impartially perform the duties of their office. The executive director shall file the oath or affirmation with the secretary of state.

F. Members of the board are personally exempt from suit with respect to all acts done and actions taken in good faith and in furtherance of this chapter.

32-1903. Organization; meetings; quorum; compensation of board; executive director; compensation; powers and duties

A. The board shall annually elect a president and a vice-president from among its membership and, subject to title 41, chapter 4, article 4, select an executive director who may or may not be a member of the board. The executive director shall serve at the pleasure of the board.

B. The president of the board shall preside at all of its meetings. The vice-president shall act if the president is absent. A majority of the membership of the board constitutes a quorum.

C. The executive director is the executive officer in charge of the board's office and shall administer this chapter under the direction of the board. The executive director shall make, keep and be in charge of all records and record books required to be kept by the board, including a register of all licensees and registered businesses under this chapter. The executive director shall attend to the correspondence of the board and perform other duties the board requires. The executive director is eligible to receive compensation as determined pursuant to section 38-611.

D. Any member of the board or the executive director may administer oaths in connection with the duties of the board. The books, registers and records of the board as made and kept by the executive director or under the executive director's supervision are prima facie evidence of the matter therein recorded in any court of law. Members of the board are eligible to receive compensation in the amount of two hundred dollars for each day of actual service in the business of the board and reimbursement for all expenses necessarily and properly incurred in attending meetings of or for the board.

E. The executive director may designate the deputy director to sign claims and other documents in the executive director's absence. If the executive director dies, becomes incapacitated or resigns, the deputy director shall serve as the executive director until the board selects a new executive director.

F. The executive director may cause to be published reports summarizing judgments, decrees, court orders and board action that may have been rendered under this chapter, including the nature of charges and the disposition of the charges. The executive director may disseminate information regarding drugs, devices, poisons or hazardous substances in situations the executive director believes involve imminent danger to health or gross deception of the consumer and report the results of investigations carried out under this chapter.

### 32-1904. Powers and duties of board; immunity

A. The board shall:

1. Make bylaws and adopt rules that are necessary to protect the public and that pertain to the practice of pharmacy, the manufacturing, wholesaling or supplying of drugs, devices, poisons or hazardous substances, the use of pharmacy technicians and support personnel and the lawful performance of its duties.

2. Fix standards and requirements to register and reregister pharmacies, except as otherwise specified.

3. Investigate compliance as to the quality, label and labeling of all drugs, devices, poisons or hazardous substances and take action necessary to prevent the sale of these if they do not conform to the standards prescribed in this chapter, the official compendium or the federal act.

4. Enforce its rules. In so doing, the board or its agents have free access, during the hours reported with the board or the posted hours at the facility, to any pharmacy, manufacturer, wholesaler, third-party logistics provider, nonprescription drug permittee or other establishment in which drugs, devices, poisons or hazardous substances are manufactured, processed, packed or held, or to enter any vehicle being used to transport or hold such drugs, devices, poisons or hazardous substances for the purpose of:

(a) Inspecting the establishment or vehicle to determine whether any provisions of this chapter or the federal act are being violated.

(b) Securing samples or specimens of any drug, device, poison or hazardous substance after paying or offering to pay for the sample.

(c) Detaining or embargoing a drug, device, poison or hazardous substance in accordance with section 32-1994.

5. Examine and license as pharmacists and pharmacy interns all qualified applicants as provided by this chapter.

6. Require each applicant for an initial license to apply for a fingerprint clearance card pursuant to section 41-1758.03. If an applicant is issued a valid fingerprint clearance card, the applicant shall submit the valid fingerprint clearance card to the board with the completed application. If an applicant applies for a fingerprint clearance card and is denied, the applicant may request that the board consider the application for licensure notwithstanding the absence of a valid fingerprint clearance card. The board, in its

discretion, may approve an application for licensure despite the denial of a valid fingerprint clearance card if the board determines that the applicant's criminal history information on which the denial was based does not alone disqualify the applicant from licensure.

7. Issue duplicates of lost or destroyed permits on the payment of a fee as prescribed by the board.

8. Adopt rules to rehabilitate pharmacists and pharmacy interns as provided by this chapter.

9. At least once every three months, notify pharmacies regulated pursuant to this chapter of any modifications on prescription writing privileges of podiatrists, dentists, doctors of medicine, registered nurse practitioners, osteopathic physicians, veterinarians, physician assistants, optometrists and homeopathic physicians of which it receives notification from the state board of podiatry examiners, state board of dental examiners, Arizona medical board, Arizona state board of nursing, Arizona board of osteopathic examiners in medicine and surgery, Arizona state veterinary medical examining board, Arizona regulatory board of physician assistants, state board of optometry or board of homeopathic and integrated medicine examiners.

10. Charge a permittee a fee, as determined by the board, for an inspection if the permittee requests the inspection.

11. Issue only one active or open license per individual.

12. Allow a licensee to regress to a lower level license on written explanation and review by the board for discussion, determination and possible action.

B. The board may:

1. Employ chemists, compliance officers, clerical help and other employees subject to title 41, chapter 4, article 4 and provide laboratory facilities for the proper conduct of its business.

2. Provide, by educating and informing the licensees and the public, assistance in curtailing abuse in the use of drugs, devices, poisons and hazardous substances.

3. Approve or reject the manner of storage and security of drugs, devices, poisons and hazardous substances.

4. Accept monies and services to assist in enforcing this chapter from other than licensees:

(a) For performing inspections and other board functions.

(b) For the cost of copies of the pharmacy and controlled substances laws, the annual report of the board and other information from the board.

5. Adopt rules for professional conduct appropriate to the establishment and maintenance of a high standard of integrity and dignity in the profession of pharmacy.

6. Grant permission to deviate from a state requirement for experimentation and technological advances.

7. Adopt rules for the training and practice of pharmacy interns, pharmacy technicians and support personnel.
8. Investigate alleged violations of this chapter, conduct hearings in respect to violations, subpoena witnesses and take such action as it deems necessary to revoke or suspend a license or a permit, place a licensee or permittee on probation or warn a licensee or permittee under this chapter or to bring notice of violations to the county attorney of the county in which a violation took place or to the attorney general.
9. By rule, approve colleges or schools of pharmacy.
10. By rule, approve programs of practical experience, clinical programs, internship training programs, programs of remedial academic work and preliminary equivalency examinations as provided by this chapter.
11. Assist in the continuing education of pharmacists and pharmacy interns.
12. Issue inactive status licenses as provided by this chapter.
13. Accept monies and services from the federal government or others for educational, research or other purposes pertaining to the enforcement of this chapter.
14. By rule, except from the application of all or any part of this chapter any material, compound, mixture or preparation containing any stimulant or depressant substance included in section 13-3401, paragraph 6, subdivision (c) or (d) from the definition of dangerous drug if the material, compound, mixture or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, provided that such admixtures are included in such combinations, quantity, proportion or concentration as to vitiate the potential for abuse of the substances that do have a stimulant or depressant effect on the central nervous system.
15. Adopt rules for the revocation, suspension or reinstatement of licenses or permits or the probation of licensees or permittees as provided by this chapter.
16. Issue a certificate of free sale to any person that is licensed by the board as a manufacturer for the purpose of manufacturing or distributing food supplements or dietary supplements as defined in rule by the board and that wants to sell food supplements or dietary supplements domestically or internationally. The application shall contain all of the following:
  - (a) The applicant's name, address, e-mail address, telephone and fax number.
  - (b) The product's full, common or usual name.
  - (c) A copy of the label for each product listed. If the product is to be exported in bulk and a label is not available, the applicant shall include a certificate of composition.
  - (d) The country of export, if applicable.
  - (e) The number of certificates of free sale requested.

17. Establish an inspection process to issue certificates of free sale or good manufacturing practice certifications. The board shall establish in rule:

- (a) A fee to issue certificates of free sale.
- (b) A fee to issue good manufacturing practice certifications.
- (c) An annual inspection fee.

18. Delegate to the executive director the authority to:

(a) Void a license or permit application and deem all fees forfeited by the applicant if the applicant provided inaccurate information on the application. The applicant shall have the opportunity to correct the inaccurate information within thirty days after the initial application was reviewed by board staff and the applicant was informed of the inaccuracy.

(b) If the president or vice president of the board concurs after reviewing the case, enter into an interim consent agreement with a licensee or permittee if there is evidence that a restriction against the license or permit is needed to mitigate danger to the public health and safety. The board may subsequently formally adopt the interim consent agreement with any modifications the board deems necessary.

(c) Take no action or dismiss a complaint that has insufficient evidence that a violation of statute or rule governing the practice of pharmacy occurred.

(d) Request an applicant or licensee to provide court documents and police reports if the applicant or licensee has been charged with or convicted of a criminal offense. The executive director may do either of the following if the applicant or licensee fails to provide the requested documents to the board within thirty business days after the request:

(i) Close the application, deem the application fee forfeited and not consider a new application complete unless the requested documents are submitted with the application.

(ii) Notify the licensee of an opportunity for a hearing in accordance with section 41-1061 to consider suspension of the licensee.

(e) Pursuant to section 36-2604, subsection B, review prescription information collected pursuant to title 36, chapter 28, article 1.

C. At each regularly scheduled board meeting the executive director shall provide to the board a list of the executive director's actions taken pursuant to subsection B, paragraph 18, subdivisions (a), (c) and (d) of this section since the last board meeting.

D. The board shall develop substantive policy statements pursuant to section 41-1091 for each specific licensing and regulatory authority the board delegates to the executive director.

E. The executive director and other personnel or agents of the board are not subject to civil liability for any act done or proceeding undertaken or performed in good faith and in furtherance of the purposes of this chapter.

**32-1905. Meetings; time and place; annual report**

- A. The board of pharmacy shall hold meetings to consider license and permit applications and to transact other business legally coming before it. The board must hold at least four meetings in each fiscal year.
- B. The board shall designate the time and place of its meetings at least thirty days before each meeting.
- C. The board shall submit an annual written report to the governor and to the Arizona pharmacy association that includes the names of all pharmacists, interns, pharmacy technicians, pharmacy technician trainees, pharmacies, wholesalers, third-party logistics providers and manufacturers authorized to practice under this chapter and a record of licenses, permits and renewals.

**32-1906. Membership in national associations; official attendance at professional meetings**

- A. The board may join and subscribe to state, district, regional or national organizations or publications relating to and dealing with pharmacy and manufacturing, wholesaling, and distribution of drugs, devices, poisons, and hazardous substances.
- B. Members of the board, the executive director and compliance officers, if authorized by the board, and subject to legislative appropriation therefor, may attend the state, district, regional and national meetings and other educational meetings relating to any of the subjects as provided in subsection A that, in the discretion of the board, are necessary and for its best interests.

**32-1907. Arizona state board of pharmacy fund**

- A. Except as provided in section 32-1939, the executive director shall receive and receipt for all fees and other monies provided for in this chapter and shall deposit, pursuant to sections 35-146 and 35-147, ten percent of such monies in the state general fund and ninety percent in the Arizona state board of pharmacy fund. All monies derived from civil penalties collected pursuant to this chapter shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- B. Except as provided in subsection C of this section, monies deposited in the Arizona state board of pharmacy fund shall be subject to section 35-143.01.
- C. From monies deposited in the Arizona state board of pharmacy fund pursuant to subsection A of this section, the executive director may transfer up to five hundred thousand dollars annually to the controlled substances prescription monitoring program fund established by section 36-2605 for expenses related to the controlled substances prescription monitoring program as required by title 36, chapter 28.
- D. From monies deposited in the Arizona state board of pharmacy fund pursuant to subsection A of this section, the executive director may transfer up to one million dollars annually to the Arizona poison and drug information center for the purposes specified in section 36-1161 to supplement, and not supplant, any state general fund appropriation for those purposes.

**32-1908. Scope of chapter**

- A. The provisions of this chapter regarding the selling of drugs, poisons, or hazardous substances shall be considered to include the sale, dispensing, furnishing or giving of any such article, or the supplying or applying of any such articles in the conduct of any drug, poison, or hazardous substance establishment.

B. Nothing in this chapter shall be construed to confer authority to license or regulate the collection, processing or distribution of whole human blood or its plasma, fractionations, products, derivatives or other human tissue procured, processed or distributed by federally licensed or regulated blood banks or tissue banks.

32-1909. Prescription medication donation program; distribution; immunity; rules

A. Pursuant to board rules and this section, the board shall establish a prescription medication donation program to accept and dispense prescription medications. Prescription medications may be donated at a physician's office, a pharmacy or a health care institution as defined in section 36-401 that elects to participate in the program and that meets the requirements of this section and board rules. Prescription medications shall be accepted or dispensed under the prescription medication donation program only in their original sealed and tamper-evident unit dose packaging. Prescription medication that is packaged in single unit doses may be accepted and dispensed even if the outside packaging is opened if the single unit dose packaging is undisturbed. The program shall not accept a donation of a prescription medication that either:

1. Expires within six months after the donation.
2. Is deemed adulterated pursuant to section 32-1966.

B. A person, manufacturer or health care institution may donate prescription medication to a physician's office, pharmacy, hospital or health care institution that volunteers to participate in the program and that meets the requirements prescribed by the board.

C. A physician's office, pharmacy, hospital or health care institution that participates in the program shall dispense donated prescription medication:

1. Either directly or through participating governmental or nonprofit private entities.
2. Only pursuant to a prescription order.
3. Only to a recipient who is a resident of this state and who meets the eligibility standards prescribed by the board by rule.

D. Before dispensing donated prescription medication, the physician's office, pharmacy, hospital or health care institutions participating in the program:

1. Shall comply with all applicable federal laws and the laws of this state dealing with the storage and distribution of dangerous drugs.
2. Shall examine the donated prescription medication to determine that it has not been adulterated and certify that the medication has been stored in compliance with the requirements of the product label.
3. May charge persons receiving donated prescription medication pursuant to this section a handling fee as prescribed by the board by rule to cover the costs of inspection, stocking and dispensing the prescription medication.

E. A pharmaceutical manufacturer is not liable for any claim or injury arising from the transfer of any prescription medication pursuant to this section including liability for failure to transfer or communicate product or consumer information regarding the transferred prescription medication, including the expiration date of the transferred prescription medication.

F. Persons and entities participating in the program as prescribed by this section and board rules are not subject to civil liability or professional disciplinary action.

G. In consultation with the director of the department of health services, the board shall adopt rules prescribing the following:

1. Eligibility criteria for physicians' offices, pharmacies, hospitals and health care institutions to receive and dispense donated prescription medication.
2. Standards and procedures for accepting, storing and dispensing donated prescription medication.
3. Standards and procedures for inspecting donated prescription medication to determine that the original unit dose packaging is sealed and tamper-evident and that the donated prescription medication is unadulterated, safe and suitable for dispensing.
4. Eligibility standards, based on economic need, for persons receiving donated prescription medication.
5. A means, such as an identification card, by which persons prove that they are eligible to receive donated prescription medication.
6. A form that each recipient shall sign before the recipient may receive donated prescription medication to confirm that the recipient understands the immunity provisions of the program.
7. A formula to determine the amount of the handling fee that a physician's office, pharmacy, hospital or health care institution may charge recipients.
8. A list of prescription medication, arranged either by category or by individual drug, that the program may accept from individuals.
9. A list of prescription medication, arranged either by category or by individual drug, that the program shall not accept from individuals.
10. A form each individual shall sign stating that the donor is the owner of the prescription medication and wishes to voluntarily donate the prescription medication to the program.
11. A list of prescription medication, arranged either by category or by individual drug, that the program may accept from a health care institution.
12. A list of prescription medication, arranged either by category or by individual drug, that the program shall not accept from a health care institution. The list shall include a statement as to why the prescription medication is ineligible for donation.
13. Any other standards the board determines are necessary and appropriate.

H. Notwithstanding any other law, a dispenser of donated prescription medication pursuant to this section shall not submit a claim or otherwise seek reimbursement from a public or private third party payor for the donation and a public or private third party payor shall not provide reimbursement for donations made pursuant to this section.

### 32-1910. Emergencies; continued provision of services

A. If a natural disaster or terrorist attack occurs and, as a consequence of the natural disaster or terrorist attack, a state of emergency is declared by the governor or by a county, city or town pursuant to its authority and the declared state of emergency results in individuals being unable to refill existing prescriptions, the board shall cooperate with this state and the county, city or town to ensure the provision of drugs, devices and professional services to the public.

B. If a natural disaster or terrorist attack occurs in another state and, as a consequence of the natural disaster or terrorist attack, a state of emergency is declared by the governor of that state and the declared state of emergency results in individuals being temporarily relocated to Arizona and unable to refill existing prescriptions, the board shall cooperate with this state to ensure the provision of drugs, devices and professional services to the relocated individuals.

C. When a state of emergency has been declared pursuant to this section, a pharmacist may work in the affected county, city or town and may dispense a one-time emergency refill prescription of up to a thirty-day supply of a prescribed medication if both of the following apply:

1. In the pharmacist's professional opinion the medication is essential to the maintenance of life or to the continuation of therapy.
2. The pharmacist makes a good faith effort to reduce the information to a written prescription marked "emergency prescription" and then files and maintains the prescription as required by law.

D. If the state of emergency declared pursuant to this section continues for at least twenty-one days after the pharmacist dispenses an emergency prescription pursuant to subsection C, the pharmacist may dispense one additional emergency refill prescription of up to a thirty day supply of the prescribed medication.

E. A pharmacist who is not licensed in this state, but who is currently licensed in another state, may dispense prescription medications in those affected counties, cities or towns in this state during the time that a declared state of emergency exists pursuant to this section if both of the following apply:

1. The pharmacist has proof of licensure in another state.
2. The pharmacist is engaged in a legitimate relief effort during the period of time an emergency has been declared pursuant to this section.

F. The board may adopt rules for the provision of pharmaceutical care and drug and device delivery during a declared emergency that is the consequence of a natural disaster or terrorist attack, including the use of temporary or mobile pharmacy facilities and nonresident licensed pharmacy professionals.

G. A pharmacist's authority to dispense prescriptions pursuant to this section ends when the declared state of emergency is terminated.

32-1921. Exempted acts; exemption from registration fees; definition

A. This chapter does not prevent:

1. The prescription and dispensing of drugs or prescription medications by a registered nurse practitioner or clinical nurse specialist pursuant to rules adopted by the Arizona state board of nursing in consultation with the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the Arizona state board of pharmacy.
2. The sale of nonprescription drugs that are sold at retail in original packages by a person holding a permit issued by the board under this chapter.
3. The sale of drugs at wholesale by a wholesaler or manufacturer that holds the required permit issued by the board to a person who holds the required permit issued under this chapter.
4. The manufacturing of drugs by a person who is not a pharmacist and who holds the required permit issued by the board under this chapter.
5. The following health professionals from dispensing or personally administering drugs or devices to a patient for a condition being treated by the health professional:
  - (a) A doctor of medicine licensed pursuant to chapter 13 of this title.
  - (b) An osteopathic physician licensed pursuant to chapter 17 of this title.
  - (c) A homeopathic physician licensed pursuant to chapter 29 of this title.
  - (d) A podiatrist licensed pursuant to chapter 7 of this title.
  - (e) A dentist licensed pursuant to chapter 11 of this title.
  - (f) A doctor of naturopathic medicine who is authorized to prescribe natural substances, drugs or devices and who is licensed pursuant to chapter 14 of this title.
  - (g) An optometrist who is licensed pursuant to chapter 16 of this title and who is certified for topical or oral pharmaceutical agents.
6. A veterinarian licensed pursuant to chapter 21 of this title from dispensing or administering drugs to an animal or from dispensing or administering devices to an animal being treated by the veterinarian.
7. The use of any pesticide chemical, soil or plant nutrient or other agricultural chemical that is a color additive solely because of its effect in aiding, retarding or otherwise affecting directly or indirectly the growth or other natural physiological process of produce of the soil and thereby affecting its color whether before or after harvest.
8. A licensed practical or registered nurse employed by a person licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title from assisting in the delivery of drugs and devices to patients, in accordance with chapter 7, 11, 13, 14, 17 or 29 of this title.

9. The use of any mechanical device or vending machine in connection with the sale of any nonprescription drug, including proprietary and patent medicine. The board may adopt rules to prescribe conditions under which nonprescription drugs may be dispensed pursuant to this paragraph.

B. A person who is licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title and who employs a licensed practical or registered nurse who in the course of employment assists in the delivery of drugs and devices is responsible for the dispensing process.

C. Pursuant to a prescription order written by a physician for the physician's patients and dispensed by a licensed pharmacist, a physical therapist licensed pursuant to chapter 19 of this title, an occupational therapist licensed pursuant to chapter 34 of this title or an athletic trainer licensed pursuant to chapter 41 of this title may procure, store and administer nonscheduled legend and topical anti-inflammatories and topical anesthetics for use in phonophoresis and iontophoresis procedures and within the scope of practice of physical or occupational therapy or athletic training.

D. A public health facility operated by this state or a county and a qualifying community health center may dispense medication or devices to patients at no cost without providing a written prescription if the public health facility or the qualifying community health center meets all storage, labeling, safety and record keeping rules adopted by the board of pharmacy.

E. A person who is licensed pursuant to chapter 7, 11, 13, 14, 17 or 29 of this title, who is practicing at a public health facility or a qualifying community health center and who is involved in the dispensing of medication or devices only at a facility or center, whether for a charge or at no cost, shall register to dispense with the appropriate licensing board but is exempt from paying registration fees.

F. For the purposes of this section, "qualifying community health center" means a primary care clinic that is recognized as nonprofit under section 501(c)(3) of the United States internal revenue code and whose board of directors includes patients of the center and residents of the center's service area.

#### 32-1921.01. Disclosures on applications; licensees; applicability

A. A pharmacist, pharmacy intern, pharmacy technician and pharmacy technician trainee are not required to disclose the following information when filing an application under this chapter:

1. A single misdemeanor charge that was dismissed, expunged or set aside more than five years before the date of application.
2. A single misdemeanor conviction that occurred more than ten years before the date of application.
3. A single felony conviction that was reduced to a misdemeanor conviction or that was dismissed, expunged or set aside more than ten years before the date of application.

B. An applicant or licensee who has had more than one of any charge or conviction specified in subsection A of this section shall disclose that information to the board.

C. Subsection A of this section applies to current licensees.

#### 32-1922. Qualifications of applicant; reciprocity; preliminary equivalency examination; honorary certificate; fee

A. An applicant for licensure as a pharmacist shall:

1. Be of good moral character.
2. Be a graduate of a school or college of pharmacy or department of pharmacy of a university recognized by the board or the accreditation council for pharmacy education, or qualify under subsection D of this section.
3. Have successfully completed, as substantiated by proper affidavits, a program of practical experience under the direct supervision of a licensed pharmacist who is approved by the board.
4. Pass the pharmacist licensure examination and jurisprudence examination approved by the board. An applicant who fails an examination three times shall petition the board for permission before retaking the examination. The board shall evaluate the petition and determine whether to require additional educational training before approving each additional retake of the examination.
5. Pay an application fee prescribed by the board of not more than five hundred dollars. An applicant for reciprocal licensure shall pay the fee prescribed in section 32-1924, subsection D.

B. The board may license as a pharmacist, without a pharmacist licensure examination, a person who is licensed as a pharmacist by a pharmacist licensure examination in some other jurisdiction if that person:

1. Produces satisfactory evidence to the board of having had the required secondary and professional education and training.
2. Is possessed of good morals as demanded of applicants for licensure and relicensure under this chapter.
3. Presents proof to the board's satisfaction that the person is licensed by a pharmacist licensure examination equivalent to the pharmacist licensure examination required by the board and that the person holds the license in good standing. If the applicant was examined after June 1, 1979, the applicant must present proof to the board's satisfaction of having passed the national association of boards of pharmacy licensure examination or the north American pharmacist licensure examination.
4. Presents proof to the board's satisfaction that any other license granted to the applicant by any other jurisdiction has not been suspended, revoked or otherwise restricted for any reason except nonrenewal or for failure to obtain the required continuing education credits in any jurisdiction where the applicant is currently licensed but not engaged in the practice of pharmacy.
5. Passes a board-approved jurisprudence examination.

C. Subsection B of this section applies only if the jurisdiction in which the person is licensed grants, under like conditions, reciprocal licensure as a pharmacist to a pharmacist who is licensed by examination in this state and the person holds a license in good standing issued by an active member board of the national association of boards of pharmacy.

D. If an applicant for licensure is a graduate of a pharmacy degree program at a school or college of pharmacy that was not recognized by the board at the time of the person's graduation, the applicant shall pass a preliminary equivalency examination approved by the board in order to qualify to take the examinations prescribed in subsection A of this section.

E. The preliminary equivalency examination required pursuant to subsection D of this section shall cover proficiency in English and academic areas the board deems essential to a satisfactory pharmacy curriculum.

F. An applicant who fails the preliminary equivalency examination required pursuant to subsection D of this section shall not retake the preliminary equivalency examination until the applicant files written proof with the board that the applicant has completed additional remedial academic work previously approved by the board to correct deficiencies in the applicant's education that were indicated by the results of the applicant's last preliminary equivalency examination.

G. A pharmacist who has been licensed in this state for at least fifty years shall be granted an honorary certificate of licensure by the board without the payment of the usual renewal fee, but that certificate of licensure does not confer an exemption from any other requirement of this chapter.

H. The board may require a pharmacist who has not been actively engaged in the practice of pharmacy for over one year to serve not more than four hundred hours in an internship training program approved by the board or its designee before the pharmacist may resume the active practice of pharmacy.

I. An applicant must complete the application process within twelve months after submitting the application.

### 32-1923. Interns and intern preceptors; qualifications; licensure; purpose of internship

A. A pharmacist who meets the qualifications established by the board to supervise the training of a pharmacy intern shall comply with the rules of the board and be known as a pharmacy intern preceptor.

B. A person shall not act as a pharmacy intern until that person is licensed by the board. An employer shall verify that a person is currently licensed as a pharmacy intern before the employer allows that person to act as a pharmacy intern.

C. The board shall establish the preliminary educational qualifications for all pharmacy interns, which may include enrollment and attendance in a school or college of pharmacy approved by the board.

D. A pharmacy intern who is currently licensed may be employed in a pharmacy or any other place approved and authorized by the board for training interns and shall receive instruction in the practice of pharmacy, including manufacturing, wholesaling, dispensing of drugs and devices, compounding and dispensing prescription orders, clinical pharmacy, providing drug information, keeping records and making reports required by state and federal laws and other experience that, in the discretion of the board, provides the intern with the necessary experience to practice the profession of pharmacy. Pharmacy interns may compound, dispense and sell drugs, devices and poisons or perform other duties of a pharmacist only in the presence and under the immediate personal supervision of a pharmacist.

E. Intern training and licensure as a pharmacy intern under this section are for the purpose of acquiring practical experience in the practice of the profession of pharmacy before becoming licensed as a pharmacist and are not for the purpose of continued licensure under the pharmacy laws. If a pharmacy intern fails to complete pharmacy education within a period of six years, the intern is not eligible for relicensure as an intern without an acceptable explanation to the board that the intern intends to be and is working toward becoming a pharmacist.

F. The board may accept the experience of a pharmacy intern acquired in another jurisdiction on proper certification by the other jurisdiction.

32-1923.01. Pharmacy technicians; pharmacy technician trainees; qualifications; remote dispensing site pharmacies

A. An applicant for licensure as a pharmacy technician must:

1. Be of good moral character.
2. Be at least eighteen years of age.
3. Have a high school diploma or the equivalent of a high school diploma.
4. Complete a training program prescribed by board rules.
5. Pass a board-approved pharmacy technician examination.

B. An applicant for licensure as a pharmacy technician trainee must:

1. Be of good moral character.
2. Be at least eighteen years of age.
3. Have a high school diploma or the equivalent of a high school diploma.

C. Before a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy, the pharmacy technician shall:

1. Complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.
2. Have at least one thousand hours of experience working as a pharmacy technician in an outpatient pharmacy setting under the direct supervision of a pharmacist.

D. A pharmacy technician working at a remote dispensing site pharmacy:

1. Shall maintain an active, nationally recognized pharmacy technician certification approved by the board.
2. May not perform extemporaneous sterile or nonsterile compounding but may prepare commercially available medications for dispensing, including the reconstitution of orally administered powder antibiotics.

32-1924. Licenses; fees; rules; signatures; online profiles

A. An applicant for licensure as a pharmacist who passes the board-approved examinations shall pay the board an initial licensure fee of not more than five hundred dollars.

B. An applicant for licensure as a pharmacist, intern, pharmacy technician or pharmacy technician trainee shall pay a fee prescribed by the board that does not exceed fifty dollars for issuance of a wall license. On payment of a fee of not more than fifty dollars, the board may issue a replacement wall license to a licensee who requests a replacement because the original was damaged or destroyed, because of a change of name or for other good cause as prescribed by the board.

C. An applicant for licensure as an intern shall pay a fee of not more than seventy-five dollars. A license issued pursuant to this subsection expires five years after it is issued. The board shall adopt rules to prescribe the requirements for the renewal of a license that expires before the pharmacy intern completes the education or training required for licensure as a pharmacist.

D. An applicant for reciprocal licensure as a pharmacist shall pay a fee of not more than five hundred dollars for the application and expense of making an investigation of the applicant's character, general reputation and pharmaceutical standing in the jurisdiction in which the applicant is licensed.

E. All pharmacist licenses shall bear the signatures of the executive director and a majority of the members of the board.

F. An applicant for licensure as a pharmacy technician trainee shall submit with the application a fee prescribed by the board that does not exceed one hundred dollars. A license issued pursuant to this subsection expires thirty-six months after it is issued. A pharmacy technician trainee license may not be renewed or reissued.

G. An applicant for licensure as a pharmacy technician shall submit with the application a fee prescribed by the board that does not exceed one hundred dollars.

H. A licensee shall create an online profile using the board's licensing software.

32-1925. [Renewal of license of pharmacists, interns and pharmacy technicians; fees; expiration dates; penalty for failure to renew; continuing education](#)

A. Except for interns and pharmacy technician trainees, the board shall assign all persons who are licensed under this chapter to one of two license renewal groups. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years from the last renewal date. Except as provided in section 32-4301, a holder of a license certificate designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years from the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the license. The board shall vacate a suspension when the licensee pays all past due fees and penalties. Penalties shall not exceed three hundred fifty dollars. The board may waive collection of a fee or penalty due after suspension under conditions established by a majority of the board.

B. A person shall not apply for license renewal more than sixty days before the expiration date of the license.

C. A person who is licensed as a pharmacist or a pharmacy technician and who has not renewed the license for five consecutive years shall furnish to the board satisfactory proof of fitness to be licensed as a pharmacist or a pharmacy technician, in addition to the payment of all past due fees and penalties before being reinstated.

D. Biennial renewal fees for licensure shall be not more than:

1. For a pharmacist, two hundred fifty dollars.
2. For a pharmacy technician, one hundred dollars.
3. For a duplicate renewal license, twenty-five dollars.

E. Fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of a license.

F. The board shall not renew a license for a pharmacist unless the pharmacist has complied with the mandatory continuing professional pharmacy education requirements of sections 32-1936 and 32-1937.

G. The board shall prescribe intern licensure renewal fees that do not exceed seventy-five dollars. The license of an intern who does not receive specific board approval to renew the intern license or who receives board approval to renew but who does not renew and pay all required fees before the license expiration date is suspended after the license expiration date. The board shall vacate a suspension if the licensee pays all past due fees and penalties. Penalties shall not exceed three hundred fifty dollars. The board may waive collection of a fee or penalty due after suspension under conditions established by the board.

H. The board shall not renew a license for a pharmacy technician unless that person has a current board-approved license and has complied with board-approved mandatory continuing professional education requirements. If a pharmacy technician prepares, compounds or dispenses prescription medications at a remote dispensing site pharmacy the pharmacy technician shall complete, in addition to any other board-approved mandatory continuing professional education requirements, a two-hour continuing education program on remote dispensing site pharmacy practices provided by an approved provider.

#### 32-1926. Notice of change of information required

A. Except as prescribed in subsection B of this section, a pharmacist, intern, pharmacy technician or pharmacy technician trainee, within ten days after a change in that person's employer, employer's address, home address or contact information, shall electronically update the person's online board profile or give written notice to the board office staff of the new information.

B. Pursuant to board rule, a pharmacist designated as the pharmacist in charge for a permit issued under this chapter shall give immediate notice to the board office staff of the initiation and termination of such responsibility. The pharmacist shall either electronically update the pharmacist's online board profile or give written notice to the board office staff of the new information.

#### 32-1926.01. Change in residency status; written notice required

A. A licensee shall give written notice to the board office staff of a change in the licensee's residency status authorized by the United States citizenship and immigration services.

B. If the licensee's residency status ceases to be authorized by the United States citizenship and immigration services, the licensee shall give written notice to the board office staff that the licensee voluntarily terminates the license.

32-1927. Pharmacists; pharmacy interns; disciplinary action

A. A pharmacist or pharmacy intern is subject to disciplinary action by the board for any of the following:

1. The board determines that the licensee has committed an act of unprofessional conduct.
2. The licensee is found by psychiatric examination to be mentally unfit to practice the profession of pharmacy.
3. The licensee is found to be physically or mentally incapacitated to such a degree as to render the licensee unfit to practice the profession of pharmacy.
4. The licensee is found to be professionally incompetent to such a degree as to render the licensee unfit to practice the profession of pharmacy.
5. The license was issued through error.

B. A pharmacist or pharmacy intern who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of pharmacy or to be professionally incompetent is subject to any one or combination of the following:

1. A civil penalty of not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
2. A letter of reprimand.
3. A decree of censure.
4. Completion of board-designated continuing pharmaceutical education courses.
5. Probation.
6. Suspension or revocation of the license.

C. The board may charge the costs of formal hearings to the licensee whom it finds to be in violation of this chapter or a rule adopted under this chapter.

D. The board on its own motion may investigate any evidence that appears to show that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy. Any person may, and a licensee or permittee of the board must, report to the board any information that appears to show that a pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy. The board or the executive director shall notify the pharmacist or pharmacy intern as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information

to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any pharmacist or pharmacy intern to fail to report as required by this subsection.

E. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacist or pharmacy intern employed by the pharmacy is terminated because of actions by the pharmacist or pharmacy intern that appear to show that the pharmacist or pharmacy intern is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the practice of pharmacy, along with a general statement of the reasons that led the pharmacy to take the action. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacist or pharmacy intern under investigation resigns or if a pharmacist or pharmacy intern resigns in lieu of disciplinary action by the pharmacy. Notification must include a general statement of the reasons for the resignation. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

F. The board or, if delegated by the board, the executive director shall require any combination of mental, physical, psychological, psychiatric or medical competency examinations or pharmacist licensure examinations and conduct necessary investigations including investigational interviews between representatives of the board and the pharmacist or pharmacy intern to fully inform itself about any information filed with the board under this section. These examinations may also include biological fluid testing. The board may require the pharmacist or pharmacy intern, at that person's expense, to undergo assessment by a board-approved substance abuse treatment and rehabilitation program.

G. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the license of the pharmacist or pharmacy intern, the board may take any of the following actions:

1. Dismiss if the complaint is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the licensee to complete board-designated continuing pharmaceutical education courses.

H. The board shall not disclose the name of the person who provides information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

I. If after completing its investigation the board believes that the information is or may be true, it may request a conference with the pharmacist or pharmacy intern. If the pharmacist or pharmacy intern refuses the invitation for a conference and the investigation indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

J. If through information provided pursuant to this section or by other means the board finds that the protection of the public health, welfare and safety requires emergency action against the license of a pharmacist or pharmacy intern, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the board shall also serve the licensee with a written notice of complaint and formal hearing that sets forth

the charges and licensee's right to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

K. If after completing the conference the board finds the information provided pursuant to this section is not of sufficient seriousness to merit revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Require the licensee to complete board-designated continuing pharmaceutical education courses.

L. If during a conference the board finds that the information provided pursuant to this section indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Require the licensee to complete board-designated continuing pharmaceutical education courses.
4. Enter into an agreement with the licensee to discipline the licensee, restrict the licensee's practice or professional activities or rehabilitate, retrain or assess the licensee in order to protect the public and ensure the licensee's ability to safely engage in the practice of pharmacy. The agreement may include at least the following:
  - (a) Issuance of a letter of reprimand.
  - (b) Issuance of a decree of censure.
  - (c) Practice or professional restrictions, such as not acting as a pharmacist in charge or pharmacy intern preceptor or working with another pharmacist.
  - (d) Rehabilitative, retraining or assessment programs, including:
    - (i) Board-approved community service.
    - (ii) Successful completion of additional board-designated continuing pharmaceutical education courses.
    - (iii) Successful passage of board-approved pharmacist licensure examinations.
    - (iv) Successful completion of a board-approved substance abuse treatment and rehabilitation program at the licensee's own expense.

(e) A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

(f) A period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension and any or all of the disciplinary actions, practice or professional restrictions, rehabilitative, retraining or assessment programs listed in this section or any other program agreed to by the board and the licensee.

M. If the board finds that the information provided pursuant to this section and additional information provided during the conference warrants revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

N. If the licensee wishes to be present at the formal hearing in person or by representation, or both, the licensee must file with the board an answer to the charges in the notice of hearing. The answer must be in writing, be verified under oath and be filed within thirty days after service of the notice of hearing. Failure to answer the board's notice of hearing is deemed an admission of the charges in the notice of hearing.

O. An advisory letter is a nondisciplinary public document.

P. If the board during an investigation determines that a criminal violation might have occurred, it shall disclose its investigative evidence and information to the appropriate criminal justice agency for its consideration.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

R. The board may deny a license to an applicant for the grounds prescribed in subsection A of this section.

S. A person who is licensed pursuant to this chapter or by any other jurisdiction and who has a license revoked or suspended shall not obtain a license as a pharmacy intern, phar

#### 32-1927.01. Pharmacy technicians; pharmacy technician trainees; disciplinary action

A. A pharmacy technician or pharmacy technician trainee is subject to disciplinary action by the board for any of the following:

1. The board determines that the licensee has committed an act of unprofessional conduct.
2. The licensee is found by psychiatric examination to be mentally unfit to safely perform the licensee's employment duties.
3. The licensee is found to be physically or mentally incapacitated to such a degree as to render the licensee unfit to safely perform the licensee's employment duties.
4. The licensee is found to be professionally incompetent to such a degree as to render the licensee unfit to safely perform the licensee's employment duties.

5. The license was issued through error.

B. A pharmacy technician or pharmacy technician trainee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable safely to engage in the practice of pharmacy or to be professionally incompetent is subject to any one or combination of the following:

1. A civil penalty of not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

2. A letter of reprimand.

3. A decree of censure.

4. Completion of board designated continuing education courses.

5. Probation.

6. Suspension or revocation of the license.

C. The board may charge the costs of formal hearings to the licensee whom it finds to be in violation of this chapter or a rule adopted under this chapter.

D. The board on its own motion may investigate any evidence that appears to show that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee. Any person may, and a licensee or permittee of the board must, report to the board any information that appears to show that a pharmacy technician or pharmacy technician trainee is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee. The board or the executive director shall notify the pharmacy technician or pharmacy technician trainee as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any pharmacy technician or pharmacy technician trainee to fail to report as required by this subsection.

E. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacy technician or pharmacy technician trainee employed by the pharmacy is terminated because of actions by that person that appear to show that the person is or may be professionally incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable safely to engage in the permissible activities of a pharmacy technician or pharmacy technician trainee, along with a general statement of the reasons that led the pharmacy to take the action. The pharmacy permittee or pharmacist in charge of a pharmacy located in this state must inform the board if a pharmacy technician or pharmacy technician trainee under investigation resigns or if a pharmacy technician or pharmacy technician trainee resigns in lieu of disciplinary action by the pharmacy. Notification must include a general statement of the reasons for the resignation. A person who reports information in good faith pursuant to this subsection is not subject to civil liability.

F. The board or, if delegated by the board, the executive director shall require any combination of mental, physical, psychological, psychiatric or medical competency examinations or pharmacy technician

licensure examinations and conduct necessary investigations including investigational interviews between representatives of the board and the pharmacy technician or pharmacy technician trainee to fully inform itself about any information filed with the board pursuant to this section. These examinations may also include biological fluid testing. The board may require the licensee, at that person's expense, to undergo assessment by a board approved substance abuse treatment and rehabilitation program.

G. If after completing its investigation the board finds that the information provided pursuant to this section is not of sufficient seriousness to merit disciplinary action against the license of the pharmacy technician or pharmacy technician trainee, the board may take any of the following actions:

1. Dismiss if the complaint is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after receiving the advisory letter.
3. Require the licensee to complete board designated continuing pharmaceutical education courses.

H. The board shall not disclose the name of the person who provides information regarding a licensee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

I. If after completing its investigation the board believes that the information is or may be true, it may request a conference with the licensee. If the licensee refuses the invitation for a conference and the investigation indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

J. If through information provided pursuant to this section or by other means the board finds that the protection of the public health, welfare and safety requires emergency action against the license of a pharmacy technician or pharmacy technician trainee, the board may restrict a license or order a summary suspension of a license pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the board shall also serve the licensee with a written notice of complaint and formal hearing that sets forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge on the charges within sixty days pursuant to title 41, chapter 6, article 10.

K. If after completing the conference the board finds the information provided pursuant to this section is not of sufficient seriousness to merit revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Require the licensee to complete board designated continuing pharmaceutical education courses.

L. If during a conference the board finds that the information provided pursuant to this section indicates that grounds may exist for revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.
2. File an advisory letter. The licensee may file a written response with the board within thirty days after the licensee receives the advisory letter.
3. Require the licensee to complete board designated continuing pharmaceutical education courses.
4. Enter into an agreement with the licensee to discipline the licensee, restrict the licensee's practice or professional activities or rehabilitate, retrain or assess the licensee in order to protect the public and ensure the licensee's ability to safely engage in the permissible activities of a pharmacy technician or pharmacy technician trainee. The agreement may include at least the following:
  - (a) Issuance of a letter of reprimand.
  - (b) Issuance of a decree of censure.
  - (c) Practice or professional restrictions, such as doing the following only under pharmacist supervision:
    - (i) Entering prescription or patient data.
    - (ii) Initiating or accepting verbal refill authorization.
    - (iii) Counting, pouring, packaging or labeling prescription medication.
    - (iv) Compounding, reconstituting, prepackaging or repackaging drugs.
  - (d) Rehabilitative, retraining or assessment programs, including:
    - (i) Board approved community service.
    - (ii) Successful completion of additional board designated continuing pharmaceutical education courses.
    - (iii) Successful passage of board approved pharmacist technician licensure examinations.
    - (iv) Successful completion of a board approved substance abuse treatment and rehabilitation program at the licensee's own expense.
  - (e) A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
  - (f) A period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension and any or all of the disciplinary actions, practice or professional restrictions, rehabilitative, retraining or assessment programs listed in this section or any other program agreed to by the board and the licensee.

M. If the board finds that the information provided pursuant to this section and additional information provided during the conference warrants revocation or suspension of a license, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

N. If the licensee wishes to be present at the formal hearing in person or by representation, or both, the licensee must file with the board an answer to the charges in the notice of hearing. The answer must be in writing, be verified under oath and be filed within thirty days after service of the notice of hearing. Failure to answer the board's notice of hearing is deemed an admission of the charges in the notice of hearing.

O. An advisory letter is a nondisciplinary public document.

P. If the board during an investigation determines that a criminal violation might have occurred, it shall disclose its investigative evidence and information to the appropriate criminal justice agency for its consideration.

Q. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

R. The board may deny a license to an applicant for the grounds prescribed in subsection A of this section.

S. A person licensed pursuant to this chapter or by any other jurisdiction who has a license revoked or suspended shall not obtain a license as a pharmacy technician or pharmacy technician trainee or work as a pharmacy technician or pharmacy technician trainee without the approval of the board or its designee.

### 32-1927.02. Permittees; disciplinary action

A. The board may discipline a permittee if:

1. The board determines that the permittee or permittee's employee is guilty of unethical conduct pursuant to section 32-1901.01, subsection A.

2. Pursuant to a psychiatric examination, the permittee or the permittee's employee is found to be mentally unfit to safely engage in employment duties.

3. The board determines that the permittee or the permittee's employee is physically or mentally incapacitated to such a degree as to render the permittee or permittee's employee unfit to safely engage in employment duties.

4. The permit was issued through error.

5. A permittee or permittee's employee allows a person who does not possess a current license issued by the board to work as a pharmacist, pharmacy intern, pharmacy technician or pharmacy technician trainee.

B. A permittee who after a formal hearing is found by the board to be guilty of unethical conduct, to be mentally or physically unable safely to engage in employment duties or to be in violation of this chapter or a rule adopted under this chapter or whose employee after a formal hearing is found by the board to be

guilty of unethical conduct, to be mentally or physically unable safely to engage in employment duties or to be in violation of this chapter or a rule adopted under this chapter is subject to any one or combination of the following:

1. A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
2. A letter of reprimand.
3. A decree of censure.
4. Completion of board-designated pharmacy law continuing education courses.
5. Probation.
6. Suspension or revocation of the permit.

C. The board may charge the costs of formal hearings to the permittee whom it finds to be in violation of this chapter or a rule adopted under this chapter or whose employee it finds to be in violation of this chapter or a rule adopted under this chapter.

D. The board on its own motion may investigate any evidence that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties or is or may be in violation of this chapter or a rule adopted under this chapter. Any person may, and any licensee or permittee must, report to the board any information that appears to show that a permittee or permittee's employee is or may be guilty of unethical conduct, is or may be mentally or physically unable safely to engage in employment duties or is or may be in violation of this chapter or a rule adopted under this chapter. The board or the executive director shall notify the permittee as to the content of the complaint as soon as reasonable. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unethical conduct for any permittee to fail to report as required by this subsection.

E. The board or, if delegated by the board, the executive director shall require any combination of mental, physical, psychological, psychiatric or medical competency examinations and conduct necessary investigations including investigational interviews between representatives of the board and the permittee or permittee's employee to fully inform itself about any information filed with the board under subsection D of this section. These examinations may also include biological fluid testing. The board may require the permittee or permittee's employee, at that person's expense, to undergo assessment by a board-approved substance abuse treatment and rehabilitation program.

F. If after completing its investigation the board finds that the information provided pursuant to subsection D of this section is not of sufficient seriousness to merit disciplinary action against the permit, the board may take any of the following actions:

1. Dismiss if the complaint is without merit.
2. File an advisory letter. The permittee may file a written response with the board within thirty days after receiving the advisory letter.

3. Require the permittee to complete board-designated pharmacy law continuing education courses.

G. The board shall not disclose the name of the person who provides information regarding a permittee's or permittee's employee's drug or alcohol impairment or the name of the person who files a complaint if that person requests anonymity.

H. If after completing its investigation the board believes that the information is or may be true, it may request a conference with the permittee or permittee's employee. If the permittee or permittee's employee refuses the invitation for a conference and the investigation indicates that grounds may exist for revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

I. If through information provided pursuant to subsection D of this section or by other means the board finds that the protection of the public health, welfare and safety requires emergency action against the permit, the board may restrict a permit or order a summary suspension of a permit pending proceedings for revocation or other action. If the board acts pursuant to this subsection, the board shall also serve the permittee with a written notice of complaint and formal hearing that sets forth the charges and the permittee's right to a formal hearing on the charges before the board or an administrative law judge within sixty days pursuant to title 41, chapter 6, article 10.

J. If after completing the conference the board finds the information provided pursuant to subsection D of this section is not of sufficient seriousness to merit revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.

2. File an advisory letter. The permittee may file a written response with the board within thirty days after receiving the advisory letter.

3. Require the permittee to complete board-designated pharmacy law continuing education courses.

K. If during a conference the board finds that the information provided pursuant to subsection D of this section indicates that grounds may exist for revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it may take the following actions:

1. Dismiss if the information is without merit.

2. File an advisory letter. The permittee may file a written response with the board within thirty days after the permittee receives the advisory letter.

3. Require the permittee to complete board-designated pharmacy law continuing education courses.

4. Enter into an agreement with the permittee to discipline the permittee, restrict the permittee's business activities or rehabilitate or assess the permittee in order to protect the public and ensure the permittee's ability to safely engage in employment duties. The agreement may include, at a minimum, the following disciplinary actions, business activity restrictions and rehabilitative or assessment programs:

- (a) Issuance of a letter of reprimand.
  - (b) Issuance of a decree of censure.
  - (c) Business activity restrictions, including limitations on the number, type, classification or schedule of drug, device, poison, hazardous substance, controlled substance or precursor chemical that may be manufactured, sold, distributed or dispensed.
  - (d) Successful completion of board-designated pharmacy law continuing education courses.
  - (e) Rehabilitative or assessment programs, including board-approved community service or successful completion of a board-approved substance abuse treatment and rehabilitation program at the permittee's own expense.
  - (f) A civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.
  - (g) A period and terms of probation best adapted to protect the public health and safety and rehabilitate or assess the permittee concerned. Probation may include temporary suspension and any or all of the disciplinary actions, business practice restrictions, rehabilitative or assessment programs listed in this section or any other program agreed to by the board and the permittee.
- L. If the board finds that the information provided pursuant to subsection D of this section and additional information provided during the conference indicate that grounds may exist for revocation or suspension of a permit, probation, issuance of a decree of censure or a letter of reprimand or imposition of a civil penalty, it shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.
- M. If the permittee wishes to be present at the formal hearing in person or by representation, or both, the permittee must file with the board an answer to the charges in the notice of hearing. The answer must be in writing, be verified under oath and be filed within thirty days after service of the notice of hearing. Failure to answer the board's notice of hearing is deemed an admission of the charges in the notice of hearing.
- N. If the board, during any investigation, determines that a criminal violation might have occurred, it shall disclose its investigative evidence and information to the appropriate criminal justice agency for its consideration.
- O. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a permittee.
- P. The board may deny a permit to an applicant for the grounds prescribed in subsection A of this section.
- Q. If the board approves a permit and the business fails to become operational within nine months after the date the permit is granted, the permit is no longer valid. The board may grant a onetime extension for the business to become operational.

32-1927.03. [Persons required to be permitted; formal hearing; disciplinary action](#)

A. A person that resides in this state or in any other jurisdiction and that sells a narcotic or other controlled substance, a prescription-only drug or device, a nonprescription drug, a precursor chemical or a restricted chemical within or into this state shall hold a valid board-issued permit. If the person does not hold a valid board-issued permit, the person is subject to disciplinary action by the board.

B. A person that after a formal hearing is found by the board to be in violation of subsection A of this section may be subject to a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted pursuant to this chapter.

C. The board may charge the cost of a formal hearing to the person that the board finds to be in violation of this chapter or a rule adopted pursuant to this chapter or whose employee the board finds to be in violation of this chapter or a rule adopted pursuant to this chapter.

D. The board on its own motion or in response to a complaint may inspect or investigate, or delegate to the executive director the authority to inspect or investigate, any evidence that appears to show a person is or may be acting in violation of subsection A of this section. The board may:

1. Send, or delegate to the executive director the authority to send, a cease and desist letter regarding the person's unauthorized business in this state.

2. Request a conference with the person if the board believes the information is or may be true. If the person refuses the invitation or fails to appear for the conference and the investigation indicates that grounds may exist for the board to impose a civil penalty, the board shall issue a formal notice that a hearing be held pursuant to title 41, chapter 6, article 10.

3. Dismiss the complaint if the complaint is without merit.

### 32-1928. [Hearings; restraining order; judicial review](#)

A. Except as provided in subsection B of this section, a license shall be denied, revoked or suspended or a pharmacist or pharmacy intern shall be placed on probation or censured and a civil penalty imposed only after due notice and a hearing pursuant to title 41, chapter 6, article 10. A licensee shall respond in writing to the board when the licensee receives notice of the hearing.

B. If the board has reasonable grounds to believe and finds that the licensee has been guilty of deliberate and wilful violations, or that the public health, safety and welfare imperatively require immediate action, and incorporates a finding to that effect in its order, the board may order a summary suspension of the license pending a hearing. If the board issues an order of summary suspension, it shall serve the licensee with written notice of the complaint and hearing setting forth the charges and informing the licensee of the licensee's right to the hearing. The board shall institute the hearing within ten days after ordering the summary suspension. Service shall be by personal service as provided by the Arizona rules of civil procedure.

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

D. With or without conditions, the board may reinstate the license of any pharmacist or pharmacy intern that it has placed on probation or whose license it has suspended or revoked.

32-1929. Biennial registration of pharmacies, wholesalers, third-party logistics providers, manufacturers and similar places; application

A. Except as provided in section 32-4301, the board shall require and provide for biennial registration of every pharmacy, wholesaler, third-party logistics provider and manufacturer and any other place in which or from which drugs are sold, compounded, dispensed, stocked, exposed, manufactured or offered for sale.

B. Any person desiring to operate, maintain, open or establish a pharmacy, wholesaling firm or manufacturing plant, or any other place in which or from which drugs are manufactured, compounded, dispensed, stocked, exposed, sold or offered for sale, shall apply to the board for a permit before engaging in any such activity.

C. The application for a permit to operate a pharmacy, drug manufacturing facility or wholesaling facility in this state shall be made on a form prescribed and furnished by the board, which, when properly executed, indicates the ownership, trustee, receiver or other person or persons desiring the permit, including the pharmacist responsible to the board for the operation of a pharmacy or drug manufacturing facility, or other individual approved by and responsible to the board for the operation of wholesaling facilities, as well as the location, including the street name and number, and such other information as required by the board to establish the identity, exact location and extent of activities, in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale.

D. The application for a permit to operate a pharmacy, drug manufacturing facility or wholesaling facility outside of this state that will dispense, sell, transfer or distribute drugs into this state shall be made on a form prescribed and furnished by the board, which, when properly executed, indicates the ownership, trustee, receiver or other person or persons desiring the permit, including the individual approved by and responsible to the board for the operation of the pharmacy, drug manufacturing facility or wholesaling facility, as well as the location, including the street name and number, and such other information as required by the board to establish the identity, exact location and extent of activities, in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale.

E. If it is desired to operate, maintain, open or establish more than one pharmacy, or any other place of business in which or from which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale, a separate application shall be made and a separate permit shall be issued for each place, business or outlet.

32-1930. Types of permits; restrictions on permits; discontinuance of pharmacy permit

A. On application, the board may issue the following classes or kinds of permits:

1. If approved by the board, a pharmacy, limited service pharmacy, automated prescription-dispensing kiosk, full service wholesale drug, third-party logistics provider, nonprescription drug wholesale and drug manufacturer's permit.

2. Drug packager or drug prepacker permit to an individual or establishment that is currently listed by the United States food and drug administration and has met the requirements of that agency to purchase, repack, relabel or otherwise alter the manufacturer's original package of an approved drug product with the intent of reselling these items to persons or businesses authorized to possess or resell the repackaged, prepackaged or relabeled drug.

3. A compressed medical gas distributor permit and a durable medical equipment and compressed medical gas supplier permit.

B. The board shall deny or revoke a pharmacy permit if a medical practitioner receives compensation, either directly or indirectly, from a pharmacy as a result of the practitioner's prescription orders. This does not include compensation to a medical practitioner who is the owner of a building where space is leased to a pharmacy at the prevailing rate, not resulting in a rebate to the medical practitioner.

C. If a pharmacy permanently discontinues operation, the permittee shall immediately surrender the permit to the executive director. The permittee shall remove all drug signs and symbols, either within or without the premises, and shall remove or destroy all drugs, devices, poisons and hazardous substances.

D. An automated prescription-dispensing kiosk may not contain or dispense a controlled substance as defined in section 36-2501 and the controlled substances act (P.L. 91-513; 84 Stat. 1242; 21 United States Code section 802).

**32-1931. Permit fees; issuance; expiration; renewals; online profiles**

A. The board shall assign the permit of all persons or firms issued under this chapter to one of two permit renewal groups. Except as provided in section 32-4301, a holder of a permit designated in the licensing database as even by way of verbiage or numerical value shall renew it biennially on or before November 1 of the even-numbered year, two years from the last renewal date. Except as provided in section 32-4301, a holder of a permit designated in the licensing database as odd by way of verbiage or numerical value shall renew it biennially on or before November 1 of the odd-numbered year, two years from the last renewal date. Failure to renew and pay all required fees on or before November 1 of the year in which the renewal is due suspends the permit. The board shall vacate a suspension when the permittee pays penalties of not to exceed \$350 and all past due fees. The board may waive collection of a fee or penalty due after suspension under conditions established by a majority of the board.

B. Permit fees that are designated to be not more than a maximum amount shall be set by the board for the following two fiscal years beginning November 1. The board shall establish the fees approximately proportionate to the maximum fee allowed to cover the board's anticipated expenditures for the following two fiscal years. Variation in a fee is not effective except at the expiration date of the permit.

C. Applications for permits shall be accompanied by the following biennial fees as determined by subsection B of this section:

1. A drug manufacturer's permit, not more than \$1,000.
2. A pharmacy permit, not more than \$500.
3. A limited service pharmacy permit or an automated prescription-dispensing kiosk permit, not more than \$500.
4. A full service wholesale drug permit or a third-party logistics provider permit, not more than \$1,000.
5. A nonprescription drug wholesale permit, not more than \$500.
6. A drug repackager's permit, not more than \$1,000.

7. A compressed medical gas distributor permit, not more than \$200.

8. A durable medical equipment and compressed medical gas supplier permit, not more than \$100.

D. If an applicant is found to be satisfactory to the board, the executive director shall issue to the applicant a permit for each pharmacy, manufacturer, wholesaler or other place of business in which drugs are sold, manufactured, compounded, dispensed, stocked, exposed or offered for sale, for which application is made.

E. Permits issued under this section are not transferable.

F. If a permittee does not apply for renewal, the permit expires pursuant to subsection A of this section. A person may activate and renew an expired permit by filing the required application and fee. Renewal thirty days after the expiration date of a permit may be made only on payment of the required biennial renewal fee, all past due fees and a penalty of one-half of the amount of the applicable biennial renewal fee. The board may waive the collection of a fee or penalty due after suspension pursuant to conditions prescribed by the board.

G. A permittee shall create an online profile using the board's licensing software.

**32-1932.01. Substance abuse treatment and rehabilitation program; private contract; funding**

A. The board may establish a program for the treatment and rehabilitation of licensees who are impaired by alcohol or drug abuse. This program shall include education, intervention, therapeutic treatment and posttreatment monitoring and support.

B. The board may contract with other organizations to operate the program established pursuant to subsection A of this section. A contract with a private organization shall include the following requirements:

1. Periodic reports to the board regarding treatment program activity.

2. Pursuant to a written request by the board or its executive director, release of all treatment records.

3. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis and recommendations for continuing care, treatment and supervision.

4. Immediate reporting to the board of the name of an impaired licensee who the treating organization believes to be a danger to self or others.

5. Reports to the board, as soon as possible, of the name of a participant who refuses to submit to treatment or whose impairment is not substantially alleviated through treatment.

C. The board may allocate an amount of not to exceed twenty dollars from each fee it collects from biennial renewal licenses pursuant to section 32-1925 for the operation of the program established by this section.

D. A licensee who is impaired by alcohol or drug abuse may enter into a stipulation order with the board, or the licensee may be placed on probation or be subject to other action as provided by law.

### 32-1933. Display of license or permit

- A. The holder of a permit granted under this chapter shall conspicuously display it in the location to which it applies.
- B. A licensee shall maintain the licensee's current renewal license or duplicate current renewal license, if practicing in more than one location, in the practice site for inspection by the board or its designee or review by the public.
- C. If a licensee practices in more than one place, the board may issue one or more duplicate current renewal licenses to the licensee on payment of a fee of not more than twenty-five dollars for each duplicate current renewal license.

### 32-1934. Pharmacy operated by hospital

- A. A pharmacy operating in connection with a hospital shall comply with all the provisions of this chapter requiring registration and regulation of pharmacies and with board rules.
- B. A pharmacy operating in connection with a hospital shall also meet the following requirements:
  - 1. In hospitals with fifty beds or more, the pharmacy shall be under the continuous supervision of a pharmacist during the time it is open for pharmacy services, except that the board by rule may establish requirements to allow a pharmacist who is engaged in hospital business to be in other areas of the hospital that are located outside the pharmacy.
  - 2. In hospitals with less than fifty beds, with the written approval and recommendations of the board, the services of a pharmacist shall be required on a part-time basis according to the needs of the hospital, provided that this approval does not permit the compounding, manufacturing, dispensing, labeling, packaging or processing of drugs by other than a pharmacist.
  - 3. In the pharmacist's absence from the hospital, the supervisory registered nurse may obtain from the pharmacy necessary doses of drugs that are ordered by a medical practitioner and that are needed by a patient in an emergency, according to procedures recommended and approved by the board for each hospital.
  - 4. All drugs and medications furnished from the pharmacy to patients on discharge from the hospital shall be dispensed by a pharmacist and the medication shall be properly labeled.
  - 5. The pharmacist in charge shall initiate procedures to provide for the administrative and technical guidance in all matters pertaining to the acquiring, stocking, record keeping and dispensing of drugs and devices.

### 32-1935. Approval of schools and colleges of pharmacy

The board of pharmacy shall adopt and promulgate standards and requirements for approval of schools and colleges of pharmacy.

### 32-1936. Mandatory continuing professional pharmacy education

A. All pharmacists licensed in this state shall satisfactorily complete approved courses of continuing professional pharmacy education or continue their education by other means in accordance with rules adopted by the board before renewing a license.

B. The board by rule shall establish the form and content of courses for continuing professional pharmacy education and the number of hours required for renewal of a license.

32-1937. Exceptions to continuing education requirements

A. The requirements of continuing professional pharmacy education provided in section 32-1936 do not apply to licensees during the year of their graduation from an accredited college of pharmacy.

B. The board may make exceptions from the requirements of section 32-1936 in emergency or hardship cases or for good cause shown based on a written request for an exception from the requirements.

C. Pharmacists who are exempted from the requirements of continuing professional pharmacy education pursuant to subsection B of this section shall satisfactorily pass a written examination approved by the board for such purpose prior to license renewal.

32-1939. Condition of probation; repayment of inspection costs

A. As a condition of probation, the board may require that a licensee or permittee be subject to additional compliance inspections or audits and pay the reasonable costs of these inspections and audits. These costs shall not exceed one thousand dollars. The board shall limit these additional inspections to no more than two per year.

B. Monies received pursuant to subsection A of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona state board of pharmacy fund.

C. If a licensee or permittee fails to comply with a board order regarding the costs of additional inspections and audits, the board may enforce its order in the superior court in Maricopa County. The board may also impose additional sanctions against the licensee or permittee.

32-1940. Investigations; hearings; conferences; records; confidentiality

A. Information received and records kept by the board in connection with investigations conducted pursuant to this chapter are confidential and are not open to the public or subject to civil discovery.

B. Notwithstanding any other law or code of ethics regarding practitioner confidences, the physician-patient privilege between a medical practitioner and a patient, both as it relates to the competency of the witness and to the exclusion of confidential communications, does not pertain to any board investigations or other proceedings conducted pursuant to this chapter to the extent necessary to determine whether a violation of this chapter has occurred. Communications or 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, investigation or hearing required or authorized under this chapter.

C. The board, its employees and agents and any other person receiving this information shall keep the identity of the patient confidential at all times.

D. The board shall report evidence of a crime uncovered during an investigation to the appropriate criminal justice agency.

E. This section does not prevent the board from disclosing investigative materials concerning a licensee's alleged violation of this chapter to the licensee, the licensee's attorney, another state or federal regulatory agency or a law enforcement agency.

32-1941. Third-party logistics providers; permit required; designated representative; fingerprinting requirements

A. A third-party logistics provider that engages in the logistics services of prescription or over-the-counter dangerous drugs or dangerous devices into, within or from this state shall hold a third-party logistics provider permit in this state.

B. A third-party logistics provider shall comply with storage practices, including all of the following:

1. Maintain access to warehouse space of suitable size to facilitate safe operations, including a suitable area to quarantine a suspect product.

2. Maintain adequate security.

3. Have written policies and procedures to:

(a) Address the receipt, security, storage, inventory, shipment and distribution of a product.

(b) Identify, record and report confirmed significant losses or thefts in the United States.

(c) Correct errors and inaccuracies in inventories.

(d) Provide support for manufacturer recalls.

(e) Prepare for, protect against and address any reasonably foreseeable crisis that affects a facility's security or operation, such as an employee strike, fire or flood.

(f) Ensure that any expired product is segregated from other products and returned to the manufacturer, repackager or agent of the manufacturer or repackager or is destroyed.

(g) Maintain records reflecting the receipt and distribution of products and supplies and records of inventories.

(h) Quarantine or destroy a suspect product if directed to do so by the respective manufacturer, wholesale distributor or dispenser or an authorized governmental agency.

C. A third-party logistics provider shall make its facility available to the board for inspection during regular business hours to ensure compliance with this section.

D. A third-party logistics provider shall have a designated representative at each facility who has not been convicted of any felony violation under any federal, state or local law relating to wholesale or retail

prescription or over-the-counter dangerous drugs or dangerous devices distribution or the distribution of controlled substances.

E. A third-party logistics provider shall provide the board on the board's request with a list of all manufacturers, wholesale distributors and dispensers for whom the third-party logistics provider provides services at a facility.

F. A third-party logistics provider's designated representative shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1, which shall be submitted with the completed application. If the third-party logistics provider changes its designated representative, the new designated representative shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and submitted to the board before the change in representation is made.

### 32-1961. Limit on dispensing, compounding and sale of drugs

A. Except as otherwise provided in this chapter, it is unlawful for any person to compound, sell or dispense any drugs or to dispense or compound the prescription orders of a medical practitioner, unless that person is a pharmacist or a pharmacy intern acting under the direct supervision of a pharmacist. This subsection does not prevent a pharmacy technician or support personnel from assisting in the dispensing of drugs if this is done pursuant to rules adopted by the board and under the direct supervision of a licensed pharmacist or under remote supervision by a pharmacist.

B. Except as otherwise provided in this chapter, it is unlawful for any person, without placing a pharmacist in active personal charge at each place of business, to:

1. Open, advertise or conduct a pharmacy.
2. Stock, expose or offer drugs for sale at retail, except as otherwise specifically provided.
3. Use or exhibit the title "drug", "drugs", "drugstore", "pharmacy", "apothecary" or "prescription" or any combination of these words or titles or any title, symbol or description of like import or any other term designed to take its place.

### 32-1961.01. Remote dispensing site pharmacies

A. A remote dispensing site pharmacy shall obtain and maintain a pharmacy license issued by the board.

B. A remote dispensing site pharmacy shall meet all of the following requirements:

1. Either be jointly owned by a supervising pharmacy in this state or be operated under a contract with a pharmacy licensed and located in this state.
2. Be supervised by a pharmacist licensed and located in this state who is designated as the pharmacist who is responsible for the oversight of the remote dispensing site pharmacy.
3. Display a sign visible to the public indicating that the facility is a remote dispensing site pharmacy, that the facility is under continuous video surveillance and that the video is recorded and retained.

4. Use a common electronic recordkeeping system between the supervising pharmacy and the remote dispensing site pharmacy or allow the supervising pharmacy to access all of the remote dispensing site pharmacy's dispensing system records.

C. A pharmacist may supervise one remote dispensing site pharmacy if the pharmacist is also supervising and dispensing in a licensed pharmacy. A pharmacist may supervise up to two remote dispensing site pharmacies if the pharmacist is not simultaneously supervising and dispensing at another licensed pharmacy. A pharmacist may supervise additional remote dispensing site pharmacies with board approval.

D. A remote dispensing site pharmacy may store, hold and dispense all prescription medications. The remote dispensing site pharmacy shall:

1. Maintain a perpetual inventory of controlled substances.

2. Secure schedule II controlled substances that are opioids separately from other prescription medications used by this pharmacy locked by key, combination or other mechanical or electronic means to prohibit access by unauthorized personnel.

3. Require that the controlled substances prescription monitoring program's central database tracking system be queried pursuant to section 36-2606 by a pharmacist who is designated as the pharmacist responsible for the oversight of the remote dispensing site pharmacy before a prescription order for a schedule II controlled substance is dispensed.

4. Comply with any dispensing limits associated with the prescribing of schedule II controlled substances that are opioids.

5. Maintain a continuous system of video surveillance and recording of the pharmacy department for at least sixty days after the date of recording.

E. Each remote dispensing site pharmacy shall maintain a policy and procedures manual, which shall be made available to the board or its agent on request. In addition to any board-approved community pharmacy policy and procedure requirements, the policy and procedures manual shall include all of the following information:

1. A description of how the remote dispensing site pharmacy will comply with federal and state laws, rules and regulations.

2. The procedure for supervising the remote dispensing site pharmacy and counseling the patient or patient's caregiver using audio and visual technology that complies with the health insurance portability and accountability act of 1996.

3. The elements of a monthly inspection of the remote dispensing site pharmacy by the pharmacist who is designated as the pharmacist responsible for the oversight of the remote dispensing site pharmacy, including requirements for documentation and retention of the results of each inspection.

4. The procedure for reconciling on a monthly basis the perpetual inventory of controlled substances to the on-hand count of controlled substances at the remote dispensing site pharmacy.

5. A description of how the remote dispensing site pharmacy will improve patient access to a pharmacist and pharmacy services.

32-1962. New drug; compliance with federal act; exception

A. No person shall manufacture, sell, offer or hold for sale or give away any new drug or device unless it fully complies with the provisions of the federal act.

B. This section shall not apply to the nutritional supplement amygdalin, a cyano-genetic glycoside, also known as laetrile and vitamin B-17, which is processed from the seeds of certain fruits including apricots, peaches and plums.

32-1963. Liability of manager, proprietor or pharmacist in charge of a pharmacy; variances in quality of drugs or devices prohibited

A. The proprietor, manager, and pharmacist in charge of a pharmacy shall be responsible for the quality of drugs and devices sold or dispensed in the pharmacy, except those sold in original packages of the manufacturer.

B. No pharmacist or other person shall manufacture, compound, dispense, or offer for sale or cause to be manufactured, compounded, dispensed, or offered for sale any drug or device under or by a name recognized in the official compendium or the federal act which differs from the standard of strength, purity and quality specified therein as official at the time of manufacture, compounding, dispensing, or offering for sale, nor shall a pharmacist or other person manufacture, compound, dispense, or offer for sale, or cause to be manufactured, compounded, dispensed, or offered for sale, any drug or device, the strength, purity or quality of which falls below the required strength, purity or quality under which it is sold.

C. Within four working days of receiving a request, the proprietor, manager or pharmacist in charge shall provide the following documents relating to the acquisition or disposal of prescription-only and controlled substance medication if this information is requested by an authorized board agent in the course of his official duties:

1. Invoices.
2. Stock transfer documents.
3. Merchandise return memos.
4. Other related documentation.

32-1963.01. Substitution for prescription drugs or biological products; requirements; label; definitions

A. If a medical practitioner prescribes a brand name drug and does not indicate an intent to prevent substitution as prescribed in subsection E of this section, a pharmacist may fill the prescription with a generic equivalent drug.

B. A pharmacist may substitute a biological product for a prescribed biological product only if all of the following conditions are met:

1. The United States food and drug administration has determined the substituted product to be an interchangeable biological product.

2. The prescribing physician does not designate in writing or electronically that substitution is prohibited in a manner pursuant to subsection E of this section.

3. The pharmacy informs the patient or person presenting the prescription of the substitution pursuant to subsection C of this section.

4. Within five business days after dispensing a biological product, the dispensing pharmacist or the pharmacist's designee makes an entry of the specific product provided to the patient, including the name of the product and the manufacturer. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through an interoperable electronic medical records system, an electronic prescribing technology, a pharmacy benefit management system, or a pharmacy record. Entry into an electronic records system as described in this paragraph is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using fax, telephone, electronic transmission or other prevailing means, except that communication is not required if one of the following applies:

(a) There is no interchangeable biological product approved by the United States food and drug administration for the product prescribed.

(b) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

5. The pharmacy retains a record of the biological product dispensed pursuant to section 32-1964, subsection A.

C. Any pharmacy personnel shall notify the person presenting the prescription of the amount of the price difference between the brand name drug or biological product prescribed and the generic equivalent drug or interchangeable biological product, if both of the following apply:

1. The medical practitioner does not indicate an intent to prevent substitution with a generic equivalent drug or interchangeable biological product.

2. The transaction is not subject to third-party reimbursement.

D. The pharmacist shall place on the container the name of the drug or biological product dispensed followed by the words "generic equivalent for" or "interchangeable biological product for" followed by the brand or trade name of the product that is being replaced by the generic equivalent drug or interchangeable biological product. The pharmacist shall include the brand or trade name on the container or label of any contact lenses dispensed pursuant to this chapter.

E. A prescription generated in this state must be dispensed as written only if the prescriber writes or clearly displays "DAW", "dispense as written", "do not substitute" or "medically necessary" or any statement by the prescriber that clearly indicates an intent to prevent substitution on the face of the prescription form. A prescription from out of state or from agencies of the United States government must be dispensed as written only if the prescriber writes or clearly displays "do not substitute", "dispense as written" or "medically necessary" or any statement by the prescriber that clearly indicates an intent to prevent substitution on the face of the prescription form.

F. This section applies to all prescriptions, including those presented by or on behalf of persons receiving state or federal assistance payments.

G. An employer or agent of an employer of a pharmacist shall not require the pharmacist to dispense any specific generic equivalent drug or interchangeable biological product or to substitute any specific generic equivalent drug or interchangeable biological product for a brand name drug or biological product against the professional judgment of the pharmacist or the order of the prescriber.

H. The liability of a pharmacist in substituting according to this section is no greater than that incurred in the filling of a generically written prescription. This subsection does not limit or diminish the responsibility for the strength, purity or quality of drugs provided in section 32-1963. The failure of a prescriber to specify that no substitution is authorized does not constitute evidence of negligence.

I. A pharmacist may not make a substitution pursuant to this section unless the manufacturer or distributor of the generic equivalent drug or interchangeable biological product has shown that:

1. All products dispensed have an expiration date on the original package.
2. The manufacturer or distributor maintains recall and return capabilities for unsafe or defective drugs or biological products.

J. The board shall maintain on its public website a link to the current list of each biological product determined by the United States food and drug administration to be an interchangeable biological product.

K. The labeling and oral notification requirements of this section do not apply to pharmacies serving patients in a health care institution as defined in section 36-401. However, in order for this exemption to apply to hospitals, the hospital must have a formulary to which all medical practitioners of that hospital have agreed and that is available for inspection by the board.

L. For the purposes of this section:

1. "Biological product" has the same meaning prescribed in 42 United States Code section 262.
2. "Brand name drug" means a drug with a proprietary name assigned to it by the manufacturer or distributor.
3. "Formulary" means a list of medicinal drugs.
4. "Generic equivalent" or "generically equivalent" means a drug that has an identical amount of the same active chemical ingredients in the same dosage form, that meets applicable standards of strength, quality and purity according to the United States pharmacopeia or other nationally recognized compendium and that, if administered in the same amounts, will provide comparable therapeutic effects. Generic equivalent or generically equivalent does not include a drug that is listed by the United States food and drug administration as having unresolved bioequivalence concerns according to the administration's most recent publication of approved drug products with therapeutic equivalence evaluations.
5. "Interchangeable biological product" means a biological product that either:

(a) The United States food and drug administration has licensed and determined meets the safety standards for determining interchangeability pursuant to 42 United States Code section 262(k)(4).

(b) Is determined to be therapeutically equivalent as set forth in the latest edition of the supplement to the United States food and drug administration's approved drug products with therapeutic equivalence evaluations.

#### 32-1964. Record of prescription orders; inspections; confidentiality

A. Every proprietor, manager or pharmacist in charge of a pharmacy shall keep in the pharmacy a book or file in which that person places the original of every prescription order of drugs, devices or replacement soft contact lenses that are compounded or dispensed at the pharmacy. This information shall be serially numbered, dated and filed in the order in which the drugs, devices or replacement soft contact lenses were compounded or dispensed. A prescription order shall be kept for at least seven years. The proprietor, manager or pharmacist shall produce this book or file in court or before any grand jury on lawful order. The book or file of original prescription orders is open for inspection at all times by the prescribing medical practitioner, the board and its agents and officers of the law in performance of their duties.

B. The board, by rule, shall permit pharmacies to maintain the book or file of all original prescription orders by means of electronic media or image of the original prescription order maintained in a retrievable format in a form that contains information the board requires to provide an adequate record of drugs, devices or replacement soft contact lenses compounded or dispensed.

C. The board, by rule, shall require a similar book or file for a hospital pharmacy in a form that contains information the board requires to provide an adequate record of drugs compounded or dispensed. A prescription order or medication order must be kept for at least seven years. The administrator, manager or pharmacist must produce this book or file in court or before any grand jury on lawful order. The book or file of original prescription orders or medication orders is open for inspection at all times by the prescribing medical practitioner, the board and its agents and officers of the law in performance of their duties.

D. A pharmacist, pharmacy permittee or pharmacist in charge shall comply with applicable state and federal privacy statutes and regulations when releasing patient prescription information.

#### 32-1965. Prohibited acts

The following acts or the causing of any thereof, in addition to any others so specified in this chapter, are prohibited:

1. The manufacture, sale, holding or offering for sale of any drug, device, poison, or hazardous substance that is adulterated or misbranded.
2. The adulteration or misbranding of any drug, device, poison, or hazardous substance.
3. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a drug, device, poison, or hazardous substance, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

4. The manufacture, sale, holding or offering for sale of a counterfeit drug or forging, counterfeiting, simulating, or falsely representing or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by rules adopted under the provisions of this chapter, or of the federal act.
5. The using, on the labeling of any drug or device, or in any advertisement, relating to such drug or device, of any representation or suggestion that such drug or device complies with the provisions of this chapter.
6. In the case of a prescription-only drug or a controlled substance that requires a prescription order by state or federal law, the failure of the manufacturer, packer, or distributor to transmit, to any medical practitioner who makes a written request for information about such drug, true and correct copies of all printed matter included in any package in which that drug is distributed or other printed matter approved under the federal act.
7. Engaging in the practice of pharmacy without first having a current license in good standing issued by the board.
8. Making or offering to make a forged, counterfeit, altered or photocopied prescription or drug order for the purpose of obtaining prescription-only or controlled substance drugs.

**32-1966. Acts constituting adulteration of a drug or device**

A drug or device shall be deemed to be adulterated:

1. If it consists in whole or in part of any filthy, putrid or decomposed substance.
2. If it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or is not securely protected from dust, dirt, and, as far as may be necessary by all reasonable means, from all foreign or injurious contamination, or whereby it may have been rendered injurious to health.
3. If the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug or device meets the requirements of this chapter as to safety and has the identity and strength, and meets the quality, which it is represented to possess.
4. If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.
5. If:
  - (a) It bears or contains a color additive which is unsafe within the meaning of the federal act.
  - (b) It is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, and is unsafe within the meaning of the federal act.
6. If it is a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. No drug defined in an

official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label.

7. If it is not subject to the provisions of paragraph 6 of this section and its strength differs from, or its purity or quality falls below that which it purports or is represented to possess.

8. If it is a drug or device to which any substance has been mixed or packed therewith so as to reduce its quality or strength, or to be substituted for it in whole or in part.

32-1967. Acts constituting misbranding of a drug or device; exceptions; interpretation of misleading label; definition

A. A drug or device is misbranded:

1. If its labeling is false or misleading in any particular.

2. If in package form unless it bears a label containing both:

(a) The name and place of business of the manufacturer, packer or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

3. If any word, statement or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed on the label or labeling. Compliance with the federal act shall be deemed compliance with this chapter except for compliance with paragraph 16 of this subsection.

4. If it is for use by humans and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote or sulfonmethane, or any chemical derivative of such substance, which derivative or other substance has been found to be habit-forming, unless its label bears the name and quantity or proportion of such substance or derivative.

5. If it is a drug unless its label bears, to the exclusion of any other nonproprietary name, both:

(a) The established name of the drug, if there is an established name.

(b) In case it is fabricated from two or more ingredients, the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides, mercury, strychnine or thyroid, or derivative or preparation of any such substances, provided that the requirements for stating the quantity of the active ingredients, other than those specifically named in this subdivision, apply only to prescription drugs.

6. Unless its labeling bears both:

(a) Adequate directions for use.

(b) Adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in a manner and form as are necessary for the protection of users.

7. If it is recognized in an official compendium, unless it is packed and labeled as prescribed in such compendium, provided that the method of packing may be modified with the consent of the board.

8. If it has been found by the board to be a drug or device liable to deterioration, unless it is packaged in that form and manner, and its label bears a statement of such precautions, as the rules issued by the board require as necessary for the protection of public health.

9. If its container is so made, formed or filled as to be misleading.

10. If it is an imitation of another drug or device.

11. If it is offered for sale under the name of another drug or device.

12. If it is dangerous to health when used in the dosage or manner or with the frequency or duration prescribed, recommended or suggested in the labeling of the drug or device.

13. If it is a color additive, the intended use of which in or on drugs or devices is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive in the federal act or board rule.

14. In the case of any prescription-only drug or controlled substance distributed or offered for sale in this state, unless the manufacturer, packer or distributor of such drug or substance includes in all advertisements and other printed matter with respect to that drug a true statement of:

(a) The established name.

(b) The formula showing quantitatively each ingredient.

(c) Other information in brief summary relating to side effects, contraindications or effectiveness as required in board rules or the federal act.

15. If a trademark, trade name or other identifying mark, imprint or device of another drug or device or any likeness of another drug or device has been placed on the drug or device or on its container with intent to defraud.

16. In the case of any prescription-only drug or controlled substance if in final dosage form unless it bears a label containing both:

(a) The name and place of business of the manufacturer, and if different, the packer or distributor.

(b) An accurate statement of the quantity of the contents in terms of weight, measure or numerical count.

17. In the case of any foreign dangerous drug, if it is not approved by the United States food and drug administration or is obtained outside of the licensed supply chain regulated by the United States food and drug administration, the board or the department of health services. This paragraph does not apply to a

foreign dangerous drug that is authorized for use by a state law or that is imported lawfully under the food, drug and cosmetic act (21 United States Code section 301, et seq.) or pursuant to an announcement by the United States food and drug administration of the exercise of enforcement discretion for instances, including clinical research purposes, drug shortages, development of countermeasures against chemical, biological, radiological and nuclear terrorism agents, or pandemic influenza preparedness and response.

B. Drugs and devices that are to be processed, labeled or repacked at establishments other than those where originally processed or packed are exempt from any labeling or packaging requirements of this chapter, provided that such drugs and devices are being delivered, manufactured, processed, labeled, repacked or otherwise held in compliance with board rules or under the federal act.

C. If an article is alleged to be misbranded because the labeling is misleading, then in determining whether the labeling is misleading there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of them, but also the extent to which the labeling fails to reveal facts material in the light of such representations, or material with respect to consequences which may result from the use of the article to which the labeling relates under the conditions of use prescribed in the labeling or under such conditions of use as are customary or usual.

D. A drug or device is not considered misbranded if it is either of the following:

1. Intended for the use in pharmaceutical compounding by a licensed pharmacist, physician, drug manufacturer or distributor or registered outsourcing facility in compliance with the requirements of chapter 18 of this title and the food, drug and cosmetic act (21 United States Code section 321a and 321b).

2. Mislabeled or incorrectly filled because of a filling error by a pharmacy or a pharmacist.

E. This section does not apply to any drug or device, whether or not approved by the United States food and drug administration, that is manufactured, packed or distributed for use in pharmaceutical compounding by a licensed pharmacist, physician, drug manufacturer or distributor or registered outsourcing facility in compliance with the requirements of chapter 18 of this title, and the food, drug and cosmetic act (21 United States Code section 321a and 321b).

F. For the purposes of this section, "dangerous drug" means any drug that is unsafe for self-use in humans or animals and includes:

1. Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription", "Rx only", or words of similar import.

2. Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a \_\_\_\_", "Rx only", or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

3. Any other drug or device that by federal or state law can be lawfully dispensed only on prescription.

[32-1968. Dispensing prescription-only drug; prescription orders; refills; labels; misbranding; dispensing soft contact lenses; opioid antagonists](#)

A. A prescription-only drug shall be dispensed only under one of the following conditions:

1. By a medical practitioner in conformance with section 32-1921.
2. On a written prescription order bearing the prescribing medical practitioner's manual signature.
3. On an electronically transmitted prescription order containing the prescribing medical practitioner's electronic or digital signature.
4. On a written prescription order generated from electronic media containing the prescribing medical practitioner's electronic or manual signature. A prescription order that contains only an electronic signature must be applied to paper that uses security features that will ensure the prescription order is not subject to any form of copying or alteration.
5. On an oral prescription order that is reduced promptly to writing and filed by the pharmacist.
6. By refilling any written, electronically transmitted or oral prescription order if a refill is authorized by the prescriber either in the original prescription order, by an electronically transmitted refill order that is documented promptly and filed by the pharmacist or by an oral refill order that is documented promptly and filed by the pharmacist.
7. On a prescription order that the prescribing medical practitioner or the prescribing medical practitioner's agent transmits by fax or e-mail.
8. On a prescription order that the patient transmits by fax or by e-mail if the patient presents a written prescription order bearing the prescribing medical practitioner's manual signature when the prescription-only drug is picked up at the pharmacy.

B. A prescription order shall not be refilled if it is either:

1. Ordered by the prescriber not to be refilled.
2. More than one year since it was originally ordered.

C. A prescription order shall contain the date it was issued, the name and address of the person for whom or owner of the animal for which the drug is ordered, refills authorized, if any, the legibly printed name, address and telephone number of the prescribing medical practitioner, the name, strength, dosage form and quantity of the drug ordered and directions for its use.

D. Any drug dispensed in accordance with subsection A of this section is exempt from the requirements of section 32-1967, except section 32-1967, subsection A, paragraphs 1, 10 and 11 and the packaging requirements of section 32-1967, subsection A, paragraphs 7 and 8, if the drug container bears a label containing the name and address of the dispenser, the serial number, the date of dispensing, the name of the prescriber, the name of the patient, or, if an animal, the name of the owner of the animal and the species of the animal, directions for use and cautionary statements, if any, contained in the order. This exemption does not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail or the internet or to a drug dispensed in violation of subsection A of this section.

E. The board by rule also may require additional information on the label of prescription medication that the board believes to be necessary for the best interest of the public's health and welfare.

F. A prescription-only drug or a controlled substance that requires a prescription order is deemed to be misbranded if, at any time before dispensing, its label fails to bear the statement "Rx only". A drug to which subsection A of this section does not apply is deemed to be misbranded if, at any time before dispensing, its label bears the caution statement quoted in this subsection.

G. A pharmacist may fill a prescription order for soft contact lenses only as provided in this chapter.

H. A pharmacist may dispense naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration on the receipt of a standing order and according to protocols adopted by the board pursuant to section 32-1979. For the purposes of this subsection, "standing order" means a signed prescription order that authorizes the pharmacist to dispense naloxone hydrochloride or any other opioid antagonist for emergency purposes and that is issued by a medical practitioner licensed in this state or a state or county health officer who is a medical practitioner licensed in this state.

#### 32-1969. Filling foreign prescription orders; records; exception

A. This chapter does not prohibit a pharmacist or an intern under a pharmacist's supervision from filling a new written prescription order for a drug or device issued by a medical practitioner licensed by the appropriate licensing board of a foreign country.

B. The proprietor, manager or pharmacist in charge of a pharmacy shall keep a separate record of prescriptions filled pursuant to this section.

C. A pharmacist or intern shall not fill a prescription order issued by a medical practitioner licensed by the appropriate licensing board of a foreign country for a controlled substance as defined pursuant to title 36, chapter 27, article 2.

#### 32-1970. Initiating, monitoring and modifying drug therapy and use; conditions; definitions

A. A pharmacist who is licensed pursuant to this chapter may initiate, monitor and modify drug therapy and use only under the following circumstances:

1. The patient's drug therapy and use are pursuant to a provider.
2. The pharmacist complies with rules adopted by the board of pharmacy.
3. The pharmacist follows the written drug therapy management protocols prescribed by the provider who made the diagnosis and initiates, monitors or modifies a person's drug therapy and use only pursuant to those protocols. Each protocol developed pursuant to the drug therapy agreement shall contain detailed directions concerning the actions that the pharmacist may perform for a patient referred by the provider. The protocol shall specify, at a minimum, the specific drug or drugs to be managed by the pharmacist, the conditions and events for which the pharmacist must notify the provider and the laboratory tests that may be ordered. A provider who enters into a protocol-based drug therapy agreement must have a legitimate provider-patient relationship.

B. A licensee who violates this section commits an act of unprofessional conduct.

C. A pharmacist is responsible for the pharmacist's negligent acts that are the result of the pharmacist's change of medication or that relate to patient drug usage pursuant to drug therapy management protocols. This subsection does not limit a provider's liability for negligent acts that are not related to a pharmacist's change of medication pursuant to the protocols.

D. For the purposes of this section:

1. "Initiate, monitor and modify":

(a) Means that a pharmacist may perform specific acts as authorized by a provider pursuant to written guidelines and protocols.

(b) Does not include a pharmacist's selection of drug products that are not prescribed by the provider unless selection of the specific drug product is authorized by the written guidelines and protocols.

2. "Protocol" means a provider's written order, written standing medical order or other written order of protocol as defined by rules adopted by the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the Arizona state board of nursing and that is patient, provider and pharmacist specific for prescriptions or orders given by the provider authorizing the written protocol.

3. "Provider" means a physician who is licensed pursuant to chapter 13 or 17 of this title or a registered nurse practitioner who is licensed pursuant to chapter 15 of this title and who acts as a primary care practitioner.

32-1972. Poison or hazardous substances; misbranding and labeling; prohibitions; exemption

A. A poison or hazardous substance shall be misbranded unless the label bears, and accompanied information that it includes or bears, any directions for use which states conspicuously:

1. The name and address of the manufacturer or seller.

2. The common or usual name or the chemical name, if there is no common or usual name, of the poison or hazardous substance or of each component which contributes substantially to its poisonous or hazardous property, unless the board by rule permits or requires the use of a recognized generic name.

3. The signal words "poison" and "danger" and the skull and crossbones symbol on poisons or hazardous substances which are highly toxic.

4. The signal word "danger" on poisons or hazardous substances that are corrosive.

5. The signal word "warning" or "caution" on all other poisons or hazardous substances.

6. An affirmative statement as to the principal poisonous property, such as "flammable", "vapor harmful", "causes burns", "absorbed through skin", or similar wording descriptive of the poison or hazardous substance.

7. Precautionary measures describing the action to be followed or avoided.

8. Instruction, when necessary or appropriate, for first-aid treatment.
  9. Instructions for handling and storage of packages which require special care in handling or storage.
  10. The statement "keep out of reach of children" or its practical equivalent, or, if the poison or hazardous substance is intended for use by children, adequate directions for the protection of children from the poison or hazardous substance.
  11. Directions for using the poison or hazardous substance.
- B. A poison or hazardous substance is also misbranded by the reuse of a food, drug or cosmetic container, or in a container which, though not reused, is identifiable as a food, drug or cosmetic container by its labeling or by other identification, as a container for the poison or hazardous substance.
- C. Any statement required on the label of a poison or hazardous substance under subsection A shall be:
1. Located prominently.
  2. In the English language.
  3. In conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.
- D. If the board finds that the requirements of subsections A and B are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular poison or hazardous substance, it may establish by rule such reasonable variations or additional label requirements as it finds necessary, and any such poison or hazardous substance intended, or packaged in a form suitable, for use in the household or by children which fails to bear a label in accordance with such rules shall be deemed to be a misbranded poison or hazardous substance.
- E. If the board finds that, because of the size of the package involved or because of the minor hazard presented by the poison or hazardous substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this section is impracticable or is not necessary for the adequate protection of the public health and safety, the board shall adopt rules exempting such poisons or hazardous substances from these requirements to the extent they determine to be consistent with adequate protection of the public health and safety.
- F. If the board finds that the poisonous or hazardous nature of a poison or hazardous substance subject to this section is such that the labeling adequate to protect the public health and safety cannot be devised, or the poison or hazardous substance presents an imminent danger to the public health and safety, the board by rule may restrict the sale of such poison or hazardous substance or declare it to be banned and require its removal from commerce.
- G. The board shall conform the rules adopted under this section as far as practicable with the regulations established pursuant to the federal hazardous substances act.

32-1973. [Pharmacies; quality assurance](#)

A. As prescribed by the board by rule, each pharmacy shall implement or participate in a continuous quality assurance program to review pharmacy procedures in order to identify methods for addressing pharmacy medication errors. The rules shall prescribe requirements to document compliance and any other provisions necessary for the administration of the program.

B. Records that are generated as a component of a pharmacy's ongoing quality assurance program and that are maintained for that program are peer review documents and are not subject to subpoena or discovery in an arbitration or civil proceeding. This subsection does not prohibit a patient from accessing the patient's prescription records or affect the discoverability of any records that are not generated only as a component of a pharmacy's ongoing quality assurance program and maintained only for that program.

C. A pharmacy meets the requirements of this section if it holds a current general, special or rural general hospital license from the department of health services and is any of the following:

1. Certified by the centers for medicare and medicaid services to participate in the medicare or medicaid programs.
2. Accredited by the joint commission on the accreditation of health care organizations.
3. Accredited by the American osteopathic association.

[32-1974. Pharmacists; administration of immunizations, vaccines and emergency medications; certification; reporting requirements; advisory committee; definitions](#)

A. Except as prescribed pursuant to subsection I of this section, a pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer the following to adults without a prescription order pursuant to rules and protocols adopted by the board pursuant to this section:

1. Immunizations or vaccines recommended for adults by the United States centers for disease control and prevention.
2. Immunizations or vaccines recommended by the United States centers for disease control and prevention's health information for international travel.

B. A pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer the following to minors without a prescription order pursuant to rules and protocols adopted by the board pursuant to this section:

1. Influenza immunizations or vaccines to a person who is at least three years of age.
2. Booster doses for the primary adolescent series as recommended by the United States centers for disease control and prevention.
3. Immunizations or vaccines recommended by the United States centers for disease control and prevention to a person who is at least thirteen years of age.

C. Except as prescribed in subsection B of this section, a pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may administer immunizations and vaccines, including the first dose for the primary adolescent series, to a person who is at least six years of age but

under thirteen years of age only with a prescription order and pursuant to rules and protocols adopted by the board pursuant to this section.

D. A pharmacist who wishes to administer immunizations and vaccines pursuant to this section must be certified to do so by the board. The board shall issue a certificate to a pharmacist who meets board requirements for certification as prescribed by the board by rule.

E. A pharmacist who is certified to administer immunizations and vaccines pursuant to this section may administer without a prescription order:

1. Emergency medication to manage an acute allergic reaction to an immunization, vaccine or medication in accordance with the United States centers for disease control and prevention immunization guidelines.
2. Immunizations or vaccines to any person regardless of age during a public health emergency response of this state pursuant to section 36-787.

F. A pharmacist who administers an immunization, vaccine or emergency medication pursuant to this section must:

1. Report the administration to the person's identified primary care provider or physician within forty-eight hours after administering the immunization, vaccine or emergency medication and as prescribed by the board by rule. Failure to report the administration of an immunization, vaccine or emergency medication pursuant to this section is a violation of section 32-1901.01, subsection B, paragraph 2. The pharmacist shall make a reasonable effort to identify the person's primary care provider or physician by one or more of the following methods:

(a) Checking any adult immunization information system or vaccine registry established by the department of health services.

(b) Checking pharmacy records.

(c) Requesting the information from the person or, in the case of a minor, the person's parent or guardian.

2. Report information to any adult immunization information system or vaccine registry established by the department of health services.

3. Maintain a record of the immunization pursuant to title 12, chapter 13, article 7.1 and as prescribed by the board by rule.

4. Report to the person's identified primary care provider or physician, within twenty-four hours of occurrence, any adverse reaction that is reported to or witnessed by the pharmacist and that is listed by the vaccine manufacturer as a contraindication to further doses of the vaccine.

5. Participate in any federal vaccine adverse event reporting system or successor database.

G. This section does not establish a cause of action against a patient's primary care provider or physician for any adverse reaction, complication or negative outcome arising from the administration of any immunization, vaccine or emergency medication by a pharmacist to the patient pursuant to this section if it is administered without a prescription order written by the patient's primary care provider or physician.

H. The board shall adopt rules for the administration of vaccines or immunizations pursuant to this section regarding:

1. Protocols that are based on protocols approved by the United States centers for disease control and prevention and any advisory committee appointed by the board for the purpose of recommending protocols.
2. Recordkeeping and reporting requirements.
3. Requirements and qualifications for pharmacist certification pursuant to this section.
4. Vaccine information and educational materials for those requesting vaccines and immunizations.
5. The administration of emergency medication pursuant to this section.

I. The department of health services, by rule, shall establish and maintain a list of immunizations or vaccines that may be administered to adults by a pharmacist only pursuant to a prescription order. In adopting and maintaining this list, the department is exempt from the rulemaking requirements of title 41, chapter 6. The department shall adopt its initial rules within six months after receipt of the recommendations of the advisory committee appointed by the board and shall hold one public hearing before implementing the rules and any amendments to the rules. The list shall include those immunizations or vaccines listed in the United States centers for disease control and prevention's recommended adult immunization schedule or recommended by the United States centers for disease control and prevention's health information for international travel that have adverse reactions that could cause significant harm to a patient's health. A pharmacist may not administer immunizations or vaccines without a prescription order pursuant to this section before the department has established the list pursuant to this subsection. The board may not authorize a pharmacist to administer new immunizations or vaccines without a prescription order pursuant to this section until the department reviews the new immunizations and vaccines to determine if they should be added to the list established pursuant to this subsection.

J. The board may appoint an advisory committee to assist the board in adopting and amending rules and developing protocols relating to the administration of immunizations, vaccines and emergency medications and certification requirements.

K. A pharmacy intern who is certified by the board to administer immunizations and vaccines pursuant to this section may do so only in the presence and under the immediate personal supervision of a pharmacist who is certified as prescribed in this section.

L. This section does not prevent a pharmacist who administers an immunization or vaccine from participating in the federal vaccines for children program.

M. A pharmacist may not administer an immunization or vaccine to a minor without the consent of the minor's parent or guardian.

N. For the purposes of this section:

1. "Emergency medication" means emergency epinephrine and antihistamines in accordance with the United States centers for disease control and prevention immunization guidelines.

2. "Primary adolescent series" means those immunizations or vaccines recommended by the United States centers for disease control and prevention for children starting at age eleven or twelve.

32-1975. Legend drug products; listing; code identification; exemption; definitions

A. A legend drug product in finished solid dosage form shall not be manufactured or commercially distributed within this state unless it is clearly or prominently marked or imprinted with a code imprint identifying the drug product and the manufacturer or distributor of the drug.

B. All manufacturers or distributors of legend drugs in solid dosage form shall make available on request to the board a listing of all such legend drugs identifying by code imprint the manufacturer or distributor and the specific type of drug. The listing shall at all times be kept current by all manufacturers and distributors subject to this section.

C. The board may grant exemptions from the requirements of this section on application of any drug manufacturer or distributor showing size, physical characteristics or other unique characteristics that render the application of a code imprint to a legend drug subject to this section impractical or impossible. Any exemption granted by the board shall be included by the manufacturer or distributor in the listing required by subsection B of this section, describing the physical characteristics and type of drug to which the exemption relates.

D. This section does not apply to drug products compounded by a pharmacist licensed under section 32-1924 in a pharmacy operating under a permit issued by the board.

E. For the purposes of this section:

1. "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug or marks or monograms unique to the manufacturer or distributor of the drug, or both.

2. "Distributor" means a person who distributes for resale a drug in solid dosage form under that person's own label even if that person is not the actual manufacturer of the drug.

3. "Legend drug" means any drug defined by section 503(b) of the federal food, drug and cosmetic act and under which definition its label is required to bear the statement "Rx only".

4. "Solid dosage form" means capsules or tablets intended for oral use.

32-1976. Dispensing replacement soft contact lenses; prescription

A. A prescription order for replacement soft contact lenses may be dispensed under the following conditions:

1. The prescription order shall be in the form required by this chapter and shall include the name of the prescribing physician or optometrist.

2. The prescription order contains the date of issuance.

3. The prescription order for contact lenses includes the lens brand name, type, tint and all other specifications necessary to accurately dispense the prescription.

B. The prescription shall be dispensed with the exact lenses prescribed and no substitutions shall be made. The expiration date of the prescription shall be the earlier of the expiration date provided by the prescribing physician or optometrist or one year after the date of issuance. A refill of a prescription that is within sixty days of its expiration date shall be filled with no more than the sufficient quantity of replacement soft contact lenses needed through the expiration date.

C. The prescription shall be dispensed with a written notice containing the following wording or its substantial equivalent:

Warning: If you are having any unexplained eye discomfort, watering, vision change or redness, remove your lenses immediately and consult your eye care practitioner before wearing your lenses again.

D. Any advertisement by a pharmacy or pharmacist for replacement soft contact lenses shall include all charges associated with the purchase of replacement soft contact lenses from the pharmacy or pharmacist.

32-1977. Sale of methamphetamine precursors by a pharmacy permittee; electronic sales tracking system; violation; classification; state preemption

A. A permittee under this chapter shall not sell to the same person, and a person shall not purchase, products containing more than three and six-tenths grams per day or more than nine grams per thirty-day period of ephedrine or pseudoephedrine base, or their salts, isomers or salts of isomers. These limits apply to the total amount of base ephedrine and pseudoephedrine contained in the products and not to the overall weight of the products.

B. The permittee must keep nonprescription products containing pseudoephedrine or ephedrine behind the counter or in a locked case where a customer does not have direct access.

C. The permittee shall require a person purchasing a nonprescription product that contains pseudoephedrine or ephedrine to present valid government-issued photo identification at the point of sale. The permittee shall record all of the following:

1. The name and address of the purchaser.
2. The name and quantity of product purchased.
3. The date and time of purchase.
4. Purchaser identification type and number.

D. Before completing a sale pursuant to this section, a permittee must use an electronic sales tracking system and electronically submit the required information to the national precursor log exchange administered by the national association of drug diversion investigators if the system is available to permittees without a charge for access. For the purposes of this subsection, "available to permittees without a charge for access":

1. Includes:

- (a) Access to the web-based electronic sales tracking software, including inputting and retrieving data free of charge.

(b) Training free of charge.

(c) Technical support to integrate to point of sale vendors without a charge, if necessary.

2. Does not include:

(a) Costs relating to required internet access.

(b) Optional hardware that a pharmacy may choose to purchase for workflow purposes.

(c) Other equipment.

E. If a permittee that sells a nonprescription product containing pseudoephedrine or ephedrine experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirements of this section, the permittee must maintain a written log or an alternative electronic recordkeeping mechanism until the permittee is able to comply with the electronic sales tracking system requirements. A permittee that does not have internet access to the electronic sales tracking system is compliant with the requirements of this section if the retailer maintains a written log or an alternative electronic recordkeeping mechanism.

F. The national association of drug diversion investigators shall forward state transaction records in the national precursor log exchange to the board of pharmacy each week and provide real-time access to the national precursor log exchange information through the national precursor log exchange online portal to law enforcement in this state as authorized by the board of pharmacy.

G. The system prescribed in this section must be capable of generating a stop sale alert notification that completing the sale would result in the permittee or purchaser violating the quantity limits prescribed in this section. The permittee may not complete the sale if the system generates a stop sale alert. The electronic sales tracking system prescribed in this section must contain an override function that may be used by dispensers of ephedrine or pseudoephedrine who have a reasonable fear of imminent bodily harm if they do not complete a sale. The system must log each instance that a permittee uses the override function.

H. A person who violates this section is guilty of a class 3 misdemeanor, punishable by fine only.

I. This section does not apply to a person who obtains the product pursuant to a valid prescription order.

J. The reporting of sales of ephedrine or pseudoephedrine products is of statewide concern. The regulation of sales pursuant to this section is not subject to further regulation by a county, city, town or other political subdivision of this state.

[32-1978. Sale of dextromethorphan; age requirement; exception; violation; civil penalty; definitions](#)

A. It is prohibited for:

1. Any commercial entity to knowingly or wilfully sell or trade a finished drug product containing any quantity of dextromethorphan to a person who is under eighteen years of age.

2. Any person who is under eighteen years of age to purchase a finished drug product containing any quantity of dextromethorphan.

3. Any person to possess, receive or distribute unfinished dextromethorphan, unless the person is registered pursuant to the federal food, drug, and cosmetic act or is appropriately licensed with the board.

B. A person making a retail sale of a finished drug product containing any quantity of dextromethorphan must require and obtain proof of age from the purchaser before completing the sale, unless the person making the sale reasonably presumes the purchaser to be at least twenty-five years of age based on the purchaser's outward appearance.

C. Subsection A of this section does not apply to common carriers that possess, receive or distribute unfinished dextromethorphan for purposes of distributing such unfinished dextromethorphan between persons that are registered under section 510 of the federal food, drug, and cosmetic act or that are appropriately licensed with the board.

D. This section does not impose any compliance requirement on a retail entity other than manually obtaining and verifying proof of age as a condition of sale, including placement of products in a specific place within a store, other restrictions on a consumer's direct access to finished drug products or the maintenance of transaction records.

E. A person who sells or trades a finished drug product containing any quantity of dextromethorphan to a person who is under eighteen years of age shall receive a warning for a first offense and shall pay a civil penalty of fifty dollars for a second offense, unless the person provides documentation that there is an employee training program in place.

F. This section does not apply to a medication containing dextromethorphan that is sold pursuant to a valid prescription.

G. For the purposes of this section:

1. "Common carrier" means any person that holds itself out to the general public as a provider for hire of the transportation of merchandise, whether or not the person actually operates the vehicle by which the transportation is provided within, to or from the United States.

2. "Finished drug product" means a drug that is legally marketed under the federal food, drug, and cosmetic act and that is in finished dosage form.

3. "Unfinished dextromethorphan" means dextromethorphan in any form, compound, mixture or preparation that is not a finished drug product.

### 32-1979. Pharmacists; dispensing opioid antagonists; board protocols; immunity

A. A pharmacist may dispense, pursuant to a standing order issued pursuant to section 36-2266 and according to protocols adopted by the board, naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration for use according to the protocols specified by board rule to a person who is at risk of experiencing an opioid-related overdose or to a family member or community member who is in a position to assist that person.

B. A pharmacist who dispenses naloxone hydrochloride or any other opioid antagonist pursuant to subsection A of this section shall:

1. Document the dispensing consistent with board rules.
2. Instruct the individual to whom the opioid antagonist is dispensed to summon emergency services as soon as practicable after administering the opioid antagonist.

C. This section does not affect the authority of a pharmacist to fill or refill a prescription for naloxone hydrochloride or any other opioid antagonist that is approved by the United States food and drug administration.

D. A pharmacist who dispenses an opioid antagonist pursuant to this section is immune from professional liability and criminal prosecution for any decision made, act or omission or injury that results from that act if the pharmacist acts with reasonable care and in good faith, except in cases of wanton or wilful neglect.

#### 32-1979.02. Oral fluoride varnish; prescription and administration authority; requirements

A. A pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may prescribe and administer oral fluoride varnish pursuant to rules adopted by the board.

B. A pharmacist who wishes to administer oral fluoride varnish pursuant to this section shall successfully complete a course of training accredited by the accreditation council for pharmacy education on the use of a caries risk assessment and oral fluoride varnish application, or other board-approved training that complies with American dental association guidelines.

C. A pharmacist who administers oral fluoride varnish pursuant to this section shall do all of the following:

1. Perform a caries risk assessment with each patient and make any necessary referrals to a dentist or physician for moderate or high-risk patients within five business days.
2. Provide each patient with a fluoride record card to be shared with other providers to track fluoride treatments.
3. Inform each patient that fluoride varnish is not sufficient dental care and encourage each patient to see a dentist on a regular basis.
4. Make and keep records for at least one year following the administration of oral fluoride varnish.

D. A pharmacist may not give or receive, either directly or indirectly, a payment, kickback, rebate, bonus or other remuneration for a referral to a dentist or physician pursuant to subsection C of this section.

#### 32-1979.03. Tobacco cessation drug therapies; prescription authority; requirements; definition

A. A pharmacist who is licensed pursuant to this chapter and who meets the requirements of this section may prescribe and dispense tobacco cessation drug therapies to a qualified patient pursuant to rules

adopted by the board. Prescriptive authority is limited to nicotine-replacement tobacco cessation drug therapies, including prescription and nonprescription therapies.

B. A pharmacist who wishes to prescribe and dispense tobacco cessation drug therapies pursuant to this section shall successfully complete a course of training accredited by the accreditation council for pharmacy education in the subject area of tobacco cessation and successfully complete two hours of accreditation council for pharmacy education accredited tobacco cessation continuing education programs on license renewal. The course of training shall include all of the following:

1. Epidemiology and health consequences of tobacco-containing products.
2. Biological, psychological and sociocultural components of tobacco dependence.
3. Assessment of a patient's willingness to quit.
4. Development of a quit plan.
5. Relapse prevention strategies.
6. Approved medications used for nicotine addiction and the effectiveness of current drug therapies for smoking cessation.
7. Nonpharmacological and behavioral interventions.

C. A pharmacist who prescribes and dispenses prescription nicotine-replacement tobacco cessation drug therapies pursuant to this section shall:

1. Notify the qualified patient's designated primary care provider within seventy-two hours after the medication is prescribed.
2. Keep records that include the qualified patient's initial assessment information, the education provided and the medication plan, and any drug therapies prescribed. The records shall be made available to the qualified patient's designated primary care provider on request.

D. This section does not apply to pharmacists who are either:

1. Filling or refilling prescriptions for tobacco cessation products written by another provider.
2. Recommending nonprescription tobacco cessation therapies to a patient without a prescription.

E. For the purposes of this section, "qualified patient" means a patient who:

1. Is at least eighteen years of age.
2. Is enrolled in a structured tobacco cessation program consisting of an initial evaluation and appropriate follow-up visits with the pharmacist or primary care provider if prescribing a prescription nicotine replacement.
3. Has been educated on symptoms of nicotine toxicity and when to seek medical treatment.

### 32-1981. Definitions

In this article, unless the context otherwise requires:

1. "Chain pharmacy warehouse" means a physical location for prescription-only drugs that acts as a central warehouse and that performs intracompany sales or transfers of the prescription-only drugs to a group of pharmacies that are under common ownership or control. A chain pharmacy warehouse is not limited to the distribution of prescription-only drugs under this article.
2. "Company under common ownership" has the same meaning as affiliated group as defined in 26 United States Code section 1504.
3. "Intracompany transaction" means any sale, transfer or trade between a division, subsidiary, parent or affiliated or related company under the common ownership of a person.
4. "Normal distribution channel" means the chain of custody for a prescription-only drug that begins with the delivery of the drug by a manufacturer to a wholesale distributor who then delivers the drug to a pharmacy or a practitioner for final receipt by a patient. Normal distribution channel includes the receipt of a prescription-only drug by a common carrier or other delivery service that delivers the drug at the direction of a manufacturer, full service wholesale permittee or pharmacy and that does not purchase, sell, trade or take title to any prescription-only drug.
5. "Wholesale distribution" means distribution of a drug to a person other than a consumer or patient. Wholesale distribution does not include:
  - (a) Any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity.
  - (b) Selling, purchasing, distributing, transferring or trading a drug or offering to sell, purchase, distribute, transfer or trade a drug for emergency medical reasons. For the purposes of this subdivision, "emergency medical reasons" includes transferring a prescription drug by a community pharmacy or hospital pharmacy to another community pharmacy or hospital pharmacy to alleviate a temporary shortage.
  - (c) Drug returns if conducted by a hospital, health care entity, retail pharmacy or charitable institution in accordance with 21 Code of Federal Regulations section 203.23.
  - (d) The sale of prescription drugs by a pharmacy, not to exceed five percent of the pharmacy's gross sales, to practitioners for office use.
  - (e) Dispensing by a retail pharmacy of prescription drugs to a patient or patient's agent pursuant to the lawful order of a practitioner.
  - (f) Distributing a drug sample by a manufacturer's representative.
  - (g) Selling, purchasing or trading blood or blood components intended for transfusion.

### 32-1982. Full service wholesale permittees; bonds; designated representatives; application

A. A full service wholesale permittee that engages in the wholesale distribution of prescription-only drugs into, within or from this state must maintain a bond and have a designated representative.

B. The designated representative of a full service wholesale permittee must:

1. Be at least twenty-one years of age.

2. Have been employed full time for at least three years in a pharmacy or with a full service wholesale permittee in a capacity related to the dispensing and distribution of, and record keeping relating to, prescription-only drugs.

3. Be employed by the full service wholesale permittee in a managerial level position.

4. Be actively involved in the daily operation of the wholesale distribution of prescription-only drugs.

5. Be physically present at the full service wholesale permittee facility during regular business hours unless the absence of the designated representative is authorized.

6. Serve as a designated representative for only one full service wholesale permittee.

7. Not have any criminal convictions under any federal, state or local laws relating to wholesale or retail prescription-only drug distribution or distribution of controlled substances.

C. The board may require the applicant's designated representative to submit a full set of fingerprints to the board. The board shall submit the fingerprints 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 the fingerprint data with the federal bureau of investigation. The board may charge each applicant a fee determined by the department of public safety. The board shall forward this fee to the department of public safety.

D. The board shall require every full service wholesale permittee that is applying for an initial permit or renewal of a permit to submit a bond of at least one hundred thousand dollars or other equivalent means of security acceptable to the board. The board may use this bond to secure payment of any fines or penalties that are imposed by the board and any fees or costs that are incurred by the board regarding the permit authorized by law and that the permittee fails to pay within thirty days after the fine, penalty or cost becomes final. The bond must cover all permits held by the permittee in this state.

E. The board may waive the bond requirement if the full service wholesale permittee has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state where the full service wholesale permittee possesses a valid license in good standing.

F. For the purposes of this article, a full service wholesale permittee does not include a hospital, chain pharmacy warehouse or third party logistics provider.

### 32-1983. Restrictions on transactions

A. A full service wholesale permittee may accept prescription-only drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms of an agreement between the full service

wholesale permittee and the pharmacy or chain pharmacy warehouse. The full service wholesale permittee shall not accept as returns or exchanges from the pharmacy or chain pharmacy warehouse:

1. Adulterated or counterfeited prescription-only drugs.

2. An amount or quantity of a prescription-only drug that exceeds the amount or quantity that the full service wholesale permittee or another full service wholesale permittee under common ownership sold to the pharmacy or chain pharmacy warehouse.

B. A full service wholesale permittee may furnish prescription-only drugs only to a pharmacy or medical practitioner. The full service wholesale permittee must first verify that person holds a valid license or permit.

C. The full service wholesale permittee must deliver prescription-only drugs only to the premises listed on the license or permit. A full service wholesale permittee may furnish prescription-only drugs to an authorized person or agent of that premises if:

1. The full service wholesale permittee properly establishes the person's identity and authority.

2. Delivery to an authorized person or agent is used only to meet the immediate needs of a particular patient of the authorized person.

D. A full service wholesale permittee may furnish prescription-only drugs to a pharmacy receiving area if a pharmacist or authorized receiving personnel sign, at the time of delivery, a receipt showing the type and quantity of the prescription-only drug received. Any discrepancy between receipt and the type and quantity of the prescription-only drug actually received must be reported to the full service wholesale permittee by the next business day after the delivery to the pharmacy receiving area.

E. A full service wholesale permittee shall not accept payment for or allow the use of a person or entity's credit to establish an account for the purchase of prescription-only drugs from any person other than the owner of record, the chief executive officer or the chief financial officer listed on the license or permit of a person or entity legally authorized to receive prescription-only drugs. Any account established for the purchase of prescription-only drugs must bear the name of the licensee or permittee.

### 32-1985. Injunctive relief

The board, through the appropriate county attorney or the office of the attorney general, may apply for injunctive relief in any court of competent jurisdiction or enjoin any person from committing any act in violation of this article. Injunctive proceedings are in addition to all penalties and other remedies prescribed in this chapter.

### 32-1991. Enforcement of chapter

The state board of pharmacy, the division of narcotics enforcement and criminal intelligence within the department of public safety, all officers exercising police powers, and county attorneys shall enforce the provisions of this chapter, unless such enforcement is otherwise specifically delegated, and they shall cooperate with all officers and agencies charged with enforcement of laws of other states and the United States pertaining to the subject matter of this chapter.

32-1992. Provisions of marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances laws not invalidated by this chapter; medicated feed not included

A. Nothing in this chapter shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to marijuana, prescription-only drugs, narcotics, dangerous drugs or controlled substances as defined in the applicable federal and state laws relating to these drugs or substances.

B. Nothing in this chapter shall be interpreted to include medicated feed for veterinary use.

32-1993. Authorization to seize certain drugs, counterfeit drugs and equipment; disposition of seized equipment

A. The following may be seized by the division of narcotics enforcement and criminal intelligence within the department of public safety and its designated agents and all officers exercising police powers when they have reasonable grounds to believe it is:

1. A drug that is a counterfeit.
2. A container of such counterfeit drug.
3. Equipment used in manufacturing, compounding, or processing a drug with respect to which drug a prohibited act within the meaning of section 32-1965 has occurred.
4. Any punch, die, plate, stone, labeling, container or other thing used or designed for use in making a counterfeit drug.
5. Any conveyance being used to transport, carry or hold a counterfeit drug in violation of section 32-1965, paragraph 4.

B. When any article, equipment, conveyance, or other thing is seized pursuant to this chapter the peace officer shall, within five days thereafter, cause to be filed in the proper court in whose jurisdiction the merchandise is seized or detained a complaint for condemnation of such merchandise as provided in this chapter.

C. Any person, firm, or corporation having an interest in the alleged article, equipment, or other thing proceeded against, or any person, firm or corporation against whom a civil or criminal liability would exist if the merchandise is in violation of section 32-1965, paragraph 4 may, within twenty days following the seizure, serve and file an answer or responsive pleading to the complaint which shall allege the interest or liability of the party filing it.

D. Any article, equipment, conveyance or other thing condemned under this section shall, after entry of the decree, be disposed of by destruction or sale as the court may direct and the proceeds thereof, if sold, less the legal costs and other charges shall be deposited, pursuant to sections 35-146 and 35-147, with the state treasurer.

32-1994. Authorization to embargo adulterated or misbranded drugs or devices; condemnation; destruction; costs

A. When the board or its authorized agent finds or has probable cause to believe that any drug, device, poison, or hazardous substance is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this chapter, he shall affix to such article an appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons it is unlawful to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the board or the court.

B. When an article detained or embargoed under subsection A of this section has been found by the board to be adulterated or misbranded, it shall petition the court in whose jurisdiction the article is detained or embargoed for condemnation of such article, or if feasible, the board may permit the article to be brought into compliance with this chapter.

C. If the court finds that a detained or embargoed article is adulterated or misbranded, and it is not feasible to bring it into compliance with this chapter, such article shall be destroyed at the expense of the claimant who shall also pay all court costs, fees, storage and other proper expenses.

### 32-1995. Injunctions; restraining orders

In addition to other remedies provided, the board may apply to the proper court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary restraining order, or a temporary or permanent injunction restraining any person from violating any provision of this chapter.

### 32-1996. Violations; classification; civil penalty

A. Except as provided in this section, a person who violates this chapter:

1. Without the intent to defraud or mislead is guilty of a class 2 misdemeanor.
2. With the intent to defraud or mislead is guilty of a class 5 felony.

B. A person who violates section 32-1965, paragraph 4 or article 3.1 of this chapter is guilty of a class 2 felony.

C. Any person who secures a license or permit for that person or for another person by knowingly making a false representation, who fraudulently claims to be licensed as a pharmacist or pharmacy intern within the meaning of this chapter or who knowingly engages in the practice of pharmacy without a license is guilty of a class 2 misdemeanor.

D. A person who secures a license as a pharmacy technician or a pharmacy technician trainee for that person or for another person by knowingly making a false representation, who fraudulently claims to be licensed as a pharmacy technician or a pharmacy technician trainee or who knowingly performs the duties of a pharmacy technician or a pharmacy technician trainee without a license is guilty of a class 2 misdemeanor.

E. A person who dispenses a human growth hormone in violation of this chapter is guilty of a class 6 felony.

F. A court convicting any person for a violation of this chapter shall, immediately after the date of conviction, send a complete copy of the record of the conviction, including the person's name and offense committed, to the executive director of the board.

G. A person who violates section 32-1978 shall be issued a civil penalty only as set forth in that section.

**32-1997. Misbranding; promotion of off-label use; definitions**

A. Notwithstanding any other law, a pharmaceutical manufacturer or its representative may engage in truthful promotion of an off-label use of a drug, biological product or device.

B. This section does not require a health care insurer, other third-party payor or other health plan sponsor to provide coverage for the cost of any off-label use of a drug, biological product or device as a treatment.

C. Notwithstanding any other law, an official, employee or agent of this state may not enforce or apply section 32-1967 against or otherwise prosecute a pharmaceutical manufacturer or its representative for engaging in truthful promotion of an off-label use of a drug, biological product or device.

D. Notwithstanding any other law, the Arizona state board of pharmacy, the Arizona medical board, the Arizona board of osteopathic examiners in medicine and surgery and the department of health services may not revoke, fail to renew or take any other action against the license of a pharmaceutical manufacturer or its representative, a health care institution or a physician solely for engaging in truthful promotion of an off-label use of a drug, biological product or device.

E. For the purposes of this section:

1. "Biological product" has the same meaning prescribed in 42 United States Code section 262.

2. "Misbranding" has the same meaning described in section 32-1967 or 21 United States Code section 352.

3. "Off-label use" means the use of a United States food and drug administration-approved drug, biological product or device in a manner other than the use approved by the United States food and drug administration.

4. "Truthful promotion" means the sharing of information that is not misleading, not contrary to fact, and consistent with generally accepted scientific principles, between pharmaceutical manufacturers and licensed professionals who can prescribe medication within the provider's scope of practice.

**36-2512. Substances in schedule I**

A. The following controlled substances, unless specifically excepted, are included in schedule I:

1. Any of the following, including opiates and their isomers, esters, ethers, salts and salts of isomers, esters and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (a) Acetyl-alpha-methylfentanyl.
- (b) Acetylmethadol.
- (c) Allylprodine.
- (d) Alphacetylmethadol, except levo-alphacetylmethadol or LAAM.
- (e) Alphameprodine.
- (f) Alphamethadol.
- (g) Alpha-methylfentanyl.
- (h) Alpha-methylthiofentanyl.
- (i) Benzethidine.
- (j) Betacetylmethadol.
- (k) Beta-hydroxyfentanyl.
- (l) Beta-hydroxy-3-methylfentanyl.
- (m) Betameprodine.
- (n) Betamethadol.
- (o) Betaprodine.
- (p) Clonitazene.
- (q) Dextromoramide.
- (r) Diampromide.
- (s) 3, 4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (U-47700).
- (t) Diethylthiambutene.
- (u) Difenoxin.
- (v) Dimenoxadol.
- (w) Dimepheptanol.
- (x) Dimethylthiambutene.

(y) Dioxaphetyl butyrate.

(z) Dipipanone.

(aa) Ephedrine.

(bb) Ethylmethylthiambutene.

(cc) Etonitazene.

(dd) Etoxeridine.

(ee) Furethidine.

(ff) Hydroxypethidine.

(gg) Isophenidine.

(hh) Ketobemidone.

(ii) Lefetamine.

(jj) Levomoramide.

(kk) Levophenacymorphan.

(ll) 3-methylfentanyl.

(mm) 3-methylthiofentanyl.

(nn) Morpheridine.

(oo) MPPP(1-methyl-4-phenyl-4-propionoxypiperidine).

(pp) Noracymethadol.

(qq) Norlevorphanol.

(rr) Normethadone.

(ss) Norpipanone.

(tt) Para-fluorofentanyl.

(uu) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine).

(vv) Phenadoxone.

(ww) Phenampromide.

(xx) Phenomorphan.

(yy) Phenoperidine.

(zz) Piritramide.

(aaa) Proheptazine.

(bbb) Properidine.

(ccc) Propiram.

(ddd) Racemoramide.

(eee) Thiofentanyl.

(fff) Tilidine.

(ggg) Trimeperidine.

2. Any of the following opium derivatives and their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Acetorphine.

(b) Acetyldihydrocodeine.

(c) Benzylmorphine.

(d) 4-chloro-n-[-1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene] benzenesulfonamide (W-18).

(e) 4-chloro-n-[1-(2-phenylethyl)-2-piperidinylidene] benzenesulfonamide (W-15).

(f) Codeine methylbromide.

(g) Codeine-n-oxide.

(h) 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45).

(i) Cyprenorphine.

(j) Desomorphine.

(k) 3,4-dichloro-n-(-[1-(dimethylamino)cyclohexyl] methyl)-benzamide (AH-7921).

- (l) Dihydromorphine.
- (m) Drotebanol.
- (n) Etorphine, except hydrochloride salt.
- (o) Heroin.
- (p) Hydromorphinol.
- (q) Methyldesorphine.
- (r) Methyldihydromorphine.
- (s) Morphine methylbromide.
- (t) Morphine methylsulfonate.
- (u) Morphine-n-oxide.
- (v) Myrophine.
- (w) Nicocodeine.
- (x) Nicomorphine.
- (y) Normorphine.
- (z) Pholcodine.
- (aa) Thebacon.

3. Any material, compound, mixture or preparation that contains any quantity of the following hallucinogenic substances and their salts, isomers and salts of isomers, unless specifically excepted or unless listed in another schedule, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation (for the purposes of this paragraph, "isomer" includes the optical, position and geometric isomers):

- (a) Alpha-ethyltryptamine (AET).
- (b) 4-bromo-2, 5-dimethoxyamphetamine.
- (c) 4-bromo-2,5-dimethoxyphenethylamine (2C-B, Nexus).
- (d) 2, 5-dimethoxyamphetamine.
- (e) 2,5-dimethoxy-4-ethylamphetamine (DOET).

- (f) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7).
- (g) 4-methoxyamphetamine.
- (h) 5-methoxy-3, 4-methylenedioxyamphetamine.
- (i) 4-methyl-2, 5-dimethoxyamphetamine.
- (j) 3,4-methylenedioxy amphetamine.
- (k) 3, 4-methylenedioxymethamphetamine (MDMA).
- (l) 3, 4-methylenedioxy-N-ethylamphetamine (N-ethyl MDA, MDE, MDEA).
- (m) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy MDA).
- (n) 3, 4, 5-trimethoxy amphetamine.
- (o) 5-methoxy-N,N,-dimethyltryptamine (5-MeO-DMT).
- (p) Alpha-methyltryptamine (AMT).
- (q) Bufotenine.
- (r) Diethyltryptamine.
- (s) Dimethyltryptamine.
- (t) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT).
- (u) Ibogaine.
- (v) Lysergic acid diethylamide.
- (w) Cannabis, except the synthetic isomer of delta-9-tetrahydrocannabinol.
- (x) Mescaline.
- (y) Parahexyl.
- (z) Peyote.
- (aa) N-ethyl-3-piperidyl benzilate.
- (bb) N-methyl-3-piperidyl benzilate.
- (cc) Psilocybin.

- (dd) Psilocyn.
- (ee) Ethylamine analog of phencyclidine.
- (ff) Pyrrolidine analog of phencyclidine.
- (gg) 1-(1-(2-thienyl)cyclohexyl)pyrrolidine.
- (hh) Thiophene analog of phencyclidine.
- (ii) 4-methylmethcathinone (Mephedrone).
- (jj) 3,4-methylenedioxypropylvalerone (MDPV).
- (kk) 2-(2,5-dimethoxy-4-ethylphenyl)ethanamine (2C-E).
- (ll) 2-(2,5-dimethoxy-4-methylphenyl)ethanamine (2C-D).
- (mm) 2-(4-chloro-2,5-dimethoxyphenyl)ethanamine (2C-C).
- (nn) 2-(4-iodo-2,5-dimethoxyphenyl)ethanamine (2C-I).
- (oo) 2-[4-(ethylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-2).
- (pp) 2-[4-(isopropylthio)-2,5-dimethoxyphenyl]ethanamine (2C-T-4).
- (qq) 2-(2,5-dimethoxyphenyl)ethanamine (2C-H).
- (rr) 2-(2,5-dimethoxy-4-nitro-phenyl)ethanamine (2C-N).
- (ss) 2-(2,5-dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).
- (tt) 3,4,-methylenedioxy-N-methylcathinone (Methylone).
- (uu) 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I-NBOMe, Cimbi-5).
- (vv) 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2- methoxybenzyl)ethanamine (25C-NBOMe, Cimbi-82).
- (ww) 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2- methoxybenzyl)ethanamine (25B-NBOMe, Cimbi-36).
- (xx) (2-ethylaminopropyl)-benzofuran (EAPB).
- (yy) (2-methylaminopropyl)-benzofuran (MAPB).
- (zz) Diphenidine (DEP).
- (aaa) Methoxphenidine (MXP).

4. Any material, compound, mixture or preparation which contains any quantity of cannabimimetic substances and their salts, isomers, whether optical, positional or geometric, and salts of isomers, unless specifically excepted, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation. For the purposes of this subdivision, "cannabimimetic substances" means any substances within the following structural classes:

(a) 2-(3-hydroxycyclohexyl)phenol with substitution at the 5-position of the phenolic ring by alkyl or alkenyl, whether or not substituted on the cyclohexyl ring to any extent. Substances in the 2-(3-hydroxycyclohexyl)phenol generic definition include CP-47,497, CP-47,497 C8-Homolog, CP-55,940 and CP-56,667.

(b) 3-naphthoyl-indazole or 3-(naphthylmethane)-indazole by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted on the indazole ring to any extent, whether or not substituted on the naphthoyl ring to any extent. Substances in the 3-naphthoyl-indazole or 3-(naphthylmethane)-indazole generic definition include THJ2201 and THJ-018.

(c) 3-(naphthoyl)indole or 3-(naphthylmethane)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted on the indole ring to any extent, whether or not substituted on the naphthoyl or naphthyl ring to any extent. Substances in the 3-(naphthoyl)indole generic definition include AM-678, AM-2201, JWH-004, JWH-007, JWH-009, JWH-015, JWH-016, JWH-018, JWH-019, JWH-020, JWH-046, JWH-047, JWH-048, JWH-049, JWH-050, JWH-070, JWH-071, JWH-072, JWH-073, JWH-076, JWH-079, JWH-080, JWH-081, JWH-082, JWH-094, JWH-096, JWH-098, JWH-116, JWH-120, JWH-122, JWH-148, JWH-149, JWH-175, JWH-180, JWH-181, JWH-182, JWH-184, JWH-185, JWH-189, JWH-192, JWH-193, JWH-194, JWH-195, JWH-196, JWH-197, JWH-199, JWH-200, JWH-210, JWH-211, JWH-212, JWH-213, JWH-234, JWH-235, JWH-236, JWH-239, JWH-240, JWH-241, JWH-242, JWH-262, JWH-386, JWH-387, JWH-394, JWH-395, JWH-397, JWH-398, JWH-399, JWH-400, JWH-412, JWH-413, JWH-414 and JWH-415.

(d) 3-(naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted on the naphthoyl ring to any extent. Substances in the 3-(naphthoyl)pyrrole generic definition include JWH-030, JWH-145, JWH-146, JWH-147, JWH-150, JWH-156, JWH-243, JWH-244, JWH-245, JWH-246, JWH-292, JWH-293, JWH-307, JWH-308, JWH-346, JWH-348, JWH-363, JWH-364, JWH-365, JWH-367, JWH-368, JWH-369, JWH-370, JWH-371, JWH-373 and JWH-392.

(e) 1-(naphthylmethylene)indene by substitution of the 3-position of the indene ring, whether or not further substituted in the indene ring to any extent, whether or not substituted on the naphthyl ring to any extent. Substances in the 1-(naphthylmethylene)indene generic definition include JWH-176.

(f) 3-(phenylacetyl)indole or 3-(benzoyl)indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the phenyl ring to any extent. Substances in the 3-(phenylacetyl)indole generic definition include AM-694, AM-2233, JWH-167, JWH-201, JWH-202, JWH-203, JWH-204, JWH-205, JWH-206, JWH-207, JWH-208, JWH-209, JWH-237, JWH-248, JWH-250, JWH-251, JWH-253, JWH-302, JWH-303, JWH-304, JWH-305, JWH-306, JWH-311, JWH-312, JWH-313, JWH-314, JWH-315, JWH-316, RCS-4, RCS-8, SR-18 and SR-19.

(g) 3-(cyclopropylmethanone) indole or 3-(cyclobutylmethanone) indole or 3-(cyclopentylmethanone) indole by substitution at the nitrogen atom of the indole ring, whether or not further substituted in the indole ring to any extent, whether or not substituted on the cyclopropyl, cyclobutyl or cyclopentyl rings to

any extent. Substances in the 3-(cyclopropylmethanone) indole generic definition include UR-144, Fluoro-UR-144 and XLR-11.

(h) Other substances:

(i) (6ar,10ar)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[*c*]chromen-1-ol (HU-210).

(ii) N-(1-adamantyl)-1-pentyl-1H-indazole-3-carboxamide (APINACA, AKB48).

(iii) Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate (PB-22).

(iv) Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate (5F-PB-22).

(v) N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide (AB-FUBINACA).

(vi) N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (ADB-PINACA).

(i) Indole-3-carboxamide or indazole-3-carboxamide with substitution at the nitrogen atom of the indole ring or by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted on the indole ring or the indazole ring to any extent, whether or not substituted on the nitrogen of the carboxamide to any extent. Substances in the indole-3-carboxamide or indazole-3-carboxamide generic definition include AKB-48, fluoro-AKB-48, APINACA, AB-PINACA, AB-FUBINACA, ABICA AND ADBICA.

(j) 8-Quinoliny-indole-3-carboxylate or 8-quinoliny-indazole-3-carboxylate by substitution at the nitrogen atom of the indole ring or by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted in the indole ring or indazole ring to any extent, whether or not substituted on the quinoline ring to any extent. Substances in the 8-quinoliny-indole-3-carboxylate or the 8-quinoliny-indazole-3-carboxylate generic definition include PB-22, fluoro-PB-22, NPB-22 and fluoro-NPB-22.

(k) Naphthalenyl-indole-3-carboxylate or naphthalenyl-indazole-3-carboxylate by substitution at the nitrogen atom of the indole ring or by substitution at one or both of the nitrogen atoms of the indazole ring, whether or not further substituted in the indole or indazole ring to any extent, whether or not substituted on the naphthalenyl ring to any extent. Substances in the naphthalenyl-indole-3-carboxylate or naphthalenyl-indazole-3-carboxylate generic definition include NM2201, FDU-PB-22, SDB-005 and fluoro SDB-005.

5. Any of the following substances having a depressant effect on the central nervous system, including their salts, isomers and salts of isomers, unless specifically excepted or listed in another schedule, whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Etizolam.

(b) Mecloqualone.

(c) Methaqualone.

6. Gamma-hydroxybutyric acid, any salt, hydroxybutyric compound, derivative or preparation of gamma-hydroxybutyric acid, including any isomers, esters and ethers and salts of isomers, esters and ethers of gamma-hydroxybutyric acid, except gamma-butyrolactone if the existence of the isomers, esters and salts is possible within the specific chemical designation. Notwithstanding any other provision of the federal food, drug, and cosmetic act, for purposes of security requirements imposed by law or regulation on registered distributors and registered manufacturers, this substance if manufactured, distributed or processed in accordance with an exemption approved under section 505 of the federal food, drug, and cosmetic act is a controlled substance in schedule III pursuant to section 36-2514.

7. Any of the following stimulants including their salts, isomers and salts of isomers, unless specifically excepted or listed in another schedule, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Alpha-methylaminovalerophenone (Pentadrone).

(b) Alpha-pyrrolidinobutiophenone (Alpha-PBP).

(c) Alpha-pyrrolidinopropiophenone (Alpha-PPP).

(d) Alpha-pyrrolidinovalerophenone (Alpha-PVP).

(e) Aminorex.

(f) N-benzylpiperazine (BZP).

(g) Beta-keto-n-methylbenzodioxolylbutanamine (Butylone).

(h) Beta-keto-n-methylbenzodioxolylpentanamine (Pentylone).

(i) Cathinomimetic substances which are any substances derived from cathinone, (2-amino-1-phenyl-1-propanone) by any substitution at the phenyl ring, any substitution at the 3 position, any substitution at the nitrogen atom or any combination of the above substitutions.

(j) (+)cis-4-methylaminorex((+)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine).

(k) Dihydro-5H-indeno-(5,6-d)-1,3-dioxol-6-amine (MDAI).

(l) Dimethylcathinone (Metamfepramone).

(m) Ethcathinone.

(n) Fenethylamine.

(o) 3-fluoro-N-methylcathinone (3-FMC).

(p) 4-fluoro-N-methylcathinone (4-FMC, Flephedrone).

(q) Methcathinone.

(r) Methoxy-alpha-pyrrolidinopropiophenone (MOPPP).

(s) Methoxyphenethylamine mimetic substances which are any substances derived from 2, 5-dimethoxyphenethylamine by any substitution at the phenyl ring, any substitution at the nitrogen atom or any combination of the above substitutions.

(t) Methyl-alpha-pyrrolidinobutiophenone (MPBP).

(u) 4-methyl-alpha-pyrrolidinopropiophenone (4-MePPP).

(v) 4-methyl-N-ethylcathinone (4-MEC).

(w) Methylenedioxy-alpha-pyrrolidinopropiophenone (MDPPP).

(x) Methylenedioxyethylcathinone (Ethylone).

(y) N-ethylamphetamine.

(z) Naphthypyrovalerone (Naphyrone).

(aa) N,N-dimethylamphetamine.

B. The board may except by rule any compound, mixture or preparation containing any substance listed in this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiates the potential for abuse.

### 36-2513. Substances in schedule II

A. The following controlled substances, unless specifically excepted, are included in schedule II:

1. Any of the following substances, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by combination of extraction and chemical synthesis:

(a) Opium and opiate and any salt, compound, derivative or preparation of opium or opiate, excluding apomorphine, thebaine-derived butorphanol, dextrophan, nalbuphine, nalmeffene, naloxone and naltrexone and their respective salts, but including the following:

(i) Raw opium.

(ii) Opium extracts.

(iii) Opium fluid extracts.

(iv) Powdered opium.

(v) Granulated opium.

(vi) Tincture of opium.

(vii) Codeine.

(viii) Dihydroetorphine.

(ix) Ethylmorphine.

(x) Etorphine hydrochloride.

(xi) Hydrocodone.

(xii) Hydromorphone.

(xiii) Metopon.

(xiv) Morphine.

(xv) Oripavine.

(xvi) Oxycodone.

(xvii) Oxymorphone.

(xviii) Thebaine.

(b) Any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this paragraph, except that these substances shall not include the isoquinoline alkaloids of opium.

(c) Opium poppy and poppy straw.

(d) Coca leaves and any salt, compound, derivative or preparation of coca leaves, including cocaine and ecgonine and their salts, isomers, derivatives and salts of isomers and derivatives, and any salt, compound, derivative or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.

(e) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrene alkaloids of the opium poppy).

2. Any of the following opiates, including isomers, esters, ethers, salts and salts of isomers, esters and ethers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

(a) Alfentanil.

- (b) Alphaprodine.
- (c) Anileridine.
- (d) Bezitramide.
- (e) Bulk dextropropoxyphene (nondosage forms).
- (f) Carfentanil.
- (g) Dihydrocodeine.
- (h) Diphenoxylate.
- (i) Fentanyl.
- (j) Fentanyl immediate precursor, 4-anilino-N-phenethyl-4-piperidine (ANPP).
- (k) Isomethadone.
- (l) Levo-alphaacetylmethadol (LAAM).
- (m) Levomethorphan.
- (n) Levorphanol.
- (o) Metazocine.
- (p) Methadone.
- (q) Methadone--intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane.
- (r) Moramide--intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid.
- (s) Pethidine (meperidine).
- (t) Pethidine--intermediate--A, 4-cyano-1-methyl-4-phenylpiperidine.
- (u) Pethidine--intermediate--B, ethyl-4-phenylpiperidine-4-carboxylate.

(v) Pethidine--intermediate--C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.

(w) Phenazocine.

(x) Piminodine.

(y) Racemethorphan.

(z) Racemorphan.

(aa) Remifentanil.

(bb) Sufentanil.

(cc) Tapentadol.

3. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system:

(a) Amphetamine and its salts, optical isomers and salts of its optical isomers.

(b) Methamphetamine, including its salts, isomers and salts of isomers.

(c) Phenmetrazine and its salts.

(d) Methylphenidate.

(e) Phenylacetone (immediate precursor to amphetamine and methamphetamine).

(f) Lisdexamfetamine, and its salts, isomers and salts of isomers.

4. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

(a) Amobarbital.

(b) Glutethimide.

(c) Pentobarbital.

(d) Phencyclidine.

(e) Phencyclidine immediate precursors:

- (i) 1-phenylcyclohexylamine.
- (ii) 1-piperidinocyclohexanecarbonitrile (PCC).
- (f) Secobarbital.

5. Nabilone (hallucinogenic substance).

B. The board may except by rule any compound, mixture or preparation containing any substance listed in this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiates the potential for abuse.

**36-2514. Substances in schedule III; definition**

A. The following controlled substances, unless specifically excepted, are included in schedule III:

1. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including its salts, isomers, whether optical, position or geometric, and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (a) Benzphetamine.
- (b) Chlorphentermine.
- (c) Clortermine.
- (d) Phendimetrazine.

2. Any material, compound, mixture or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (a) Any compound, mixture or preparation containing amobarbital, secobarbital, pentobarbital or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule.
- (b) Any suppository dosage form containing amobarbital, secobarbital, pentobarbital or any salt of any of these drugs and approved by the federal act for marketing only as a suppository.
- (c) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof.
- (d) Chlorhexadol.
- (e) Embutramide.
- (f) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act.

(g) Ketamine, and its salts, isomers and salts of isomers.

(h) Lysergic acid.

(i) Lysergic acid amide.

(j) Methyprylon.

(k) Perampanel, and its salts, isomers and salts of isomers.

(l) Sulfondiethylmethane.

(m) Sulfonethylmethane.

(n) Sulfonmethane.

(o) Tiletamine/zolazepam (telazol) or any salt thereof.

3. Any material, compound, mixture or preparation containing the narcotic drug nalorphine or any of its salts.

4. Any material, compound, mixture or preparation containing the narcotic drug buprenorphine or any of its salts.

5. Any material, compound, mixture or preparation containing limited quantities of any of the following narcotic drugs or any salts thereof, calculated as the free anhydrous base or alkaloid:

(a) Not more than one point eight grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.

(b) Not more than one point eight grams of codeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(c) Not more than one point eight grams of dihydrocodeine, or any of its salts, per one hundred milliliters or not more than ninety milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(d) Not more than three hundred milligrams of ethylmorphine, or any of its salts, per one hundred milliliters or not more than fifteen milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) Not more than fifty milligrams of morphine, or any of its salts, per one hundred milliliters or per one hundred grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

6. Any material, compound, mixture or preparation containing any of the following anabolic steroids but not including an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the United States food and drug administration for such administration:

- (a) 3beta, 17-dihydroxy-5a-androstane.
- (b) 3alpha, 17beta-dihydroxy-5a-androstane.
- (c) 5alpha-androstan-3, 17-dione.
- (d) 3beta, 17beta-dihydroxy-5alpha-androst-1-ene.
- (e) 3alpha, 17beta-dihydroxy-5alpha-androst-1-ene.
- (f) 4-androstenediol.
- (g) 5-androstenediol.
- (h) 1-androstenedione.
- (i) 4-androstenedione.
- (j) 5-androstenedione.
- (k) Bolasterone.
- (l) Boldenone.
- (m) Boldione.
- (n) Calusterone.
- (o) Clostebol.
- (p) Dehydrochlormethyltestosterone.
- (q) Desoxymethyltestosterone.
- (r) Delta1-dihydrotestosterone.
- (s) 4-dihydrotestosterone.
- (t) Drostanolone.
- (u) Ethylestrenol.
- (v) Fluoxymesterone.

- (w) Formebolone.
- (x) Furazabol.
- (y) 13beta-ethyl-17beta-hydroxygon-4-en-3-one.
- (z) 4-hydroxytestosterone.
- (aa) 4-hydroxy-19-nortestosterone.
- (bb) Mestanolone.
- (cc) Mesterolone.
- (dd) Methandienone.
- (ee) Methandriol.
- (ff) Methasterone.
- (gg) Methenolone.
- (hh) 17alpha-methyl-3beta, 17beta-dihydroxy-5a-androstane.
- (ii) 17alpha-methyl-3alpha, 17beta-dihydroxy-5a-androstane.
- (jj) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene.
- (kk) 17alpha-methyl-4-hydroxynandrolone.
- (ll) Methyldienolone.
- (mm) Methyltrienolone.
- (nn) Methyltestosterone.
- (oo) Mibolerone.
- (pp) 17alpha-methyl-delta1-dihydrotestosterone.
- (qq) Nandrolone.
- (rr) 3beta, 17beta-dihydroxyestr-4-ene.
- (ss) 3alpha, 17beta-dihydroxyestr-4-ene.
- (tt) 3beta, 17beta-dihydroxyestr-5-ene.

(uu) 3alpha, 17beta-dihydroxyestr-5-ene.

(vv) 19-nor-4,9(10)-androstedione.

(ww) 19-nor-4-androstenedione.

(xx) 19-nor-5-androstenedione.

(yy) Norbolethone.

(zz) Norclostebol.

(aaa) Norethandrolone.

(bbb) Normethandrolone.

(ccc) Oxandrolone.

(ddd) Oxymesterone.

(eee) Oxymetholone.

(fff) Prostanazol.

(ggg) Stanozolol.

(hhh) Stenbolone.

(iii) Testolactone.

(jjj) Testosterone.

(kkk) Tetrahydrogestrinone.

(lll) Trenbolone.

(mmm) Any salt, ester or isomer of a drug or substance described or listed in this paragraph, if that salt, ester or isomer promotes muscle growth.

7. Dronabinol, (synthetic delta-9-tetrahydrocannabinol) in sesame oil and encapsulated in a soft gelatin capsule in a United States food and drug administration approved product (hallucinogenic substance).

B. If any person prescribes, dispenses or distributes an anabolic steroid for human use that has been approved by the United States food and drug administration for the express intent of administration through implants to cattle or other nonhuman species, the person shall be considered to have prescribed, dispensed or distributed an anabolic steroid within the meaning of this section.

C. The board may except by rule any compound, mixture or preparation containing any substance listed in this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiates the potential for abuse.

D. For the purposes of this section, "anabolic steroid" means a growth promoting drug or hormonal substance that is chemically or pharmacologically related to testosterone, other than estrogens, progestins, corticosteroids and dehydroepiandrosterone.

#### 36-2515. Substances in schedule IV

A. The following controlled substances, unless specifically excepted, are included in schedule IV:

1. Any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system, including its salts, isomers, whether optical, position or geometric, and salts of such isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (a) Cathine (+(4)-norpseudoephedrine).
- (b) Diethylpropion.
- (c) Fencamfamin.
- (d) Fenproporex.
- (e) Mazindol.
- (f) Mefenorex.
- (g) Modafinil.
- (h) Pemoline (including organometallic complexes and chelates thereof).
- (i) Phentermine.
- (j) Pipradrol.
- (k) Sibutramine.
- (l) SPA((-)-1-dimethylamino-1, 2-diphenylethane).

2. Any material, compound, mixture or preparation that contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system, including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation:

- (a) Alfaxalone.

- (b) Alprazolam.
- (c) Barbitol.
- (d) Bromazepam.
- (e) Camazepam.
- (f) Carisoprodol.
- (g) Chloral betaine.
- (h) Chloral hydrate.
- (i) Chlordiazepoxide.
- (j) Clobazam.
- (k) Clonazepam.
- (l) Clorazepate.
- (m) Clotiazepam.
- (n) Cloxazolam.
- (o) Delorazepam.
- (p) Diazepam.
- (q) Dichloralphenazone.
- (r) Estazolam.
- (s) Ethchlorvynol.
- (t) Ethinamate.
- (u) Ethyl loflazepate.
- (v) Fludiazepam.
- (w) Flunitrazepam.
- (x) Flurazepam.
- (y) Fospropofol.

(z) Halazepam.  
(aa) Haloxazolam.  
(bb) Ketazolam.  
(cc) Loprazolam.  
(dd) Lorazepam.  
(ee) Lormetazepam.  
(ff) Mebutamate.  
(gg) Medazepam.  
(hh) Meprobamate.  
(ii) Methohexital.  
(jj) Methylphenobarbital (methobarbital).  
(kk) Midazolam.  
(ll) Nimetazepam.  
(mm) Nitrazepam.  
(nn) Nordiazepam.  
(oo) Oxazepam.  
(pp) Oxazolam.  
(qq) Paraldehyde.  
(rr) Petrichloral.  
(ss) Phenobarbital.  
(tt) Pinazepam.  
(uu) Prazepam.  
(vv) Quazepam.  
(ww) Suvorexant.

(xx) Temazepam.

(yy) Tetrazepam.

(zz) Triazolam.

(aaa) Zaleplon.

(bbb) Zolpidem.

(ccc) Zopiclone.

3. Fenfluramine, and its salts, isomers, whether optical, position or geometric, and its salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible.

4. Any material, compound, mixture or preparation containing any of the following narcotic drugs, or their salts, calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(a) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit.

(b) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(c) Tramadol, 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl) cyclohexanol, and its salts, optical and geometric isomers, and its salts of isomers.

5. Any material, compound, mixture or preparation that contains any quantity of the following substances, including its salts:

(a) Pentazocine.

(b) Butorphanol, including its optical isomers.

6. Lorcaserin, and its salts, isomers and salts of isomers, whenever the existence of such salts, isomers and salts of isomers is possible.

B. The board may except by rule any compound, mixture or preparation containing any substance listed in this section from the application of all or any part of this chapter if the compound, mixture or preparation contains one or more active medicinal ingredients and if the admixtures are included therein in combinations, quantity, proportion or concentration that vitiates the potential for abuse.

### 36-2521. [Rules](#)

The board may promulgate necessary and reasonable rules relating to the registration and control of the manufacture, distribution and dispensing of controlled substances within this state.

### 36-2523. [Records of registrants; inspection; confidentiality](#)

A. Persons registered to manufacture, distribute or dispense controlled substances under this chapter shall keep records and maintain inventories in conformance with the record keeping and inventory requirements of federal law and title 32, chapter 18, and with any additional rules the board issues. Prescription orders must be filed as required by section 36-2525.

B. A person who holds a permit to operate a pharmacy issued under title 32, chapter 18 shall inventory schedule II, III, IV and V controlled substances as prescribed by federal law. The permit holder shall conduct this inventory on May 1 of each year or as directed by the Arizona state board of pharmacy. The permit holder shall also conduct this inventory if there is a change of ownership or discontinuance of business or within ten days of a change of a pharmacist in charge.

C. These records and inventories shall be open for inspection by peace officers in the performance of their duties. An officer shall not divulge information obtained pursuant to this subsection except in connection with a prosecution, investigation, judicial proceeding or administrative proceeding in which the person to whom the information relates is a party.

**ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION (F20-0804)**

Title 7, Chapter 3, Articles 3 and 4, Commission for Postsecondary Education



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 21, 2020

**SUBJECT: ARIZONA COMMISSION FOR POSTSECONDARY EDUCATION  
(F20-0804)**  
Title 7, Chapter 3, Articles 3 and 4, Commission for Postsecondary Education

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### Summary

This Five Year Review Report (5YRR) from the Commission for Postsecondary Education (Commission) relates to rules in Title 7, Chapter 3. The report address the following:

- Article 3 - Arizona Leveraging Educational Assistance Partnership Program (LEAP)
- Article 4 - Arizona Private Postsecondary Education Student Financial Assistance Program

A.R.S. § 15-1856 established the Leveraging Educational Assistance Program (LEAP) criteria. The Commission adopted the rules in Article 3 to specify the criteria for LEAP. A.R.S. § 15-1854 established the Private Postsecondary Education Student Financial Program (PFAP). The Commission adopted rules in Article 4 to specify the criteria for PFAP.

The Commission did not propose any changes to the rules in the last 5YRR of these rules.

## **Proposed Action**

The Commission is proposing to amend R7-3-308 (Arizona LEAP Institutional Review). Currently, the rule directs the Commission to visit institutions for review of program records. The Commission is proposing to update the rule language to allow the Commission to review program records electronically. This would result in a smoother program review process for both the institutions and the Commission. The Commission plans to complete the changes by Fall 2021.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Commission cites both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The Department states that the economic impact of the rules in Articles 3 and 4 is moderate, and does not differ from previous evaluations of the rules. The principal impact of these rules is on participating postsecondary institutions and their students. The program and funds outlined in these rules facilitate access to higher education opportunities for students in need of financial assistance. The stakeholders include: LEAP grant recipients, participating post-secondary institutions, and the Commission.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission states that the rules impose the least burden and cost needed to achieve the regulatory objective. The majority of the rules' burden falls on participating post-secondary institutions to ensure they are in compliance with program guidelines. The Commission states that although there are costs associated with these rules, the incentive the rules provide to post-secondary education institutions and the educational benefits provided to qualifying students outweigh these costs. Due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No. The Commission has not received any written criticisms of these rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Commission states the rules under review are mostly clear, concise, understandable, effective, and consistent with other rules and statutes with the exception of R7-3-308 (Arizona LEAP Institutional Review).

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Commission states the rules are mostly enforced as written without incident, with the exception of R7-3-308 (Arizona LEAP Institutional Review).

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

No. The Commission indicates the rules are not more stringent than the corresponding federal law, CFR Title 34, Subtitle B, Chapter VI, Part 692.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010.

9. **Conclusion**

As mentioned above, and for the reasons mentioned in the report, the Commission is proposing to amend one rule, R7-3-308 (Arizona LEAP Institutional Review). The Department plans to complete a rulemaking that would address this change by the fall of 2021.

While Council staff recommends approval of this report, Council staff does not believe the Commission has provided justification for the timeframe to complete its proposed course of action. Council staff encourages the Council to further discuss the proposed timeframe.



## Arizona Commission for Postsecondary Education

2020 North Central, Suite 650

Phoenix, Arizona 85004-4503

Tel: (602) 542-7230 | Fax: (602) 258-2483

Email: [acpe@azhighered.gov](mailto:acpe@azhighered.gov) | Website: <https://highered.az.gov>

May 28, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair

Governor's Regulatory Review Council

100 N. 15<sup>th</sup> Ave., Suite 305

Phoenix, Arizona 85007

Re: Five-Year-Review Report on Title 7, Chapter 3, Articles 3 and 4

Dear Ms. Sornsins:

Pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, the Arizona Commission for Postsecondary Education ("Commission") submits the attached Five-Year-Review Report on A.A.C. Title 7, Chapter 3, Articles 3 and 4, to the Governor's Regulatory Review Council. This Report is timely filed pursuant to the Council's letter, dated February 28, 2020.

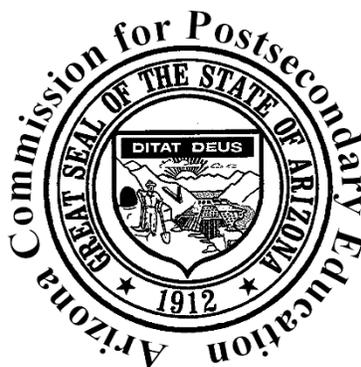
This document complies with the reporting requirement in A.R.S. § 41-1056. A.R.S § 15-1852 exempts the Commission from Title 41, Chapter 6 which encompasses A.R.S. § 41-1091.

If you need any further information, please contact me at (602) 542-7230 or [aosborn@azhighered.gov](mailto:aosborn@azhighered.gov).

Respectfully Submitted,

Dr. April L. Osborn, Executive Director

Enclosures



**FIVE-YEAR-REVIEW REPORT  
TITLE 7. EDUCATION  
CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION  
ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE  
PARTNERSHIP PROGRAM  
ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION  
STUDENT FINANCIAL ASSISTANCE PROGRAM  
May 2020**

**ARIZONA COMMISSION FOR  
POSTSECONDARY EDUCATION**

*...expanding access and increasing success  
in postsecondary education for Arizonans*

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 7. EDUCATION**  
**CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION**  
**ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP**  
**PROGRAM**  
**ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT**  
**FINANCIAL ASSISTANCE PROGRAM**

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## **FIVE-YEAR-REVIEW SUMMARY**

### **Article 3. Arizona Leveraging Educational Assistance Partnership Program**

Arizona Revised Statutes (A.R.S.) § 15-1856 establishes the Leveraging Educational Assistance Program (LEAP) criteria. The Commission has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 7, Chapter 3. The rules specifying the criteria for the Leveraging Educational Assistance Partnership Program for the Commission are in A.A.C. Title 7, Chapter 3, Article 3.

The rules in A.A.C. Title 7, Chapter 3, Article 3 cover the federal LEAP requirements; institutional eligibility requirements; receipt and allocation of Arizona LEAP program funds; Arizona LEAP student eligibility requirements; Arizona LEAP award procedures; award alteration; administrative costs; institutional program review; and definitions. Rules R7-3-301 through R7-3-309 were adopted September 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act.

Through an analysis of the rules in Article 3, the Commission has determined the rules are effective, enforced as written, consistent with state and federal statutes and rules, and are clear, concise, and understandable. Furthermore, the Commission plans to revise R7-3-308 of this Article in the near future.

## **INFORMATION THAT IS IDENTICAL FOR ALL RULES UNDER ARTICLE 3**

1. **Authorization of the rule by existing statutes**

A.R.S. § 15-1856

3. **Effectiveness in achieving the objective**

The rule is effective in achieving its objective.

4. **Consistency with state and federal statutes and rules**

The rule is consistent with state and federal statutes and rules.

5. **Enforcement policy**

The rule describes processes and/or definitions regarding the program and is enforced as written. However, R7-3-308 (Arizona LEAP Institutional Review) could be amended. Additional, information regarding R7-3-308 is referenced in the next section.

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticisms of the rules received within the last five years**

The Commission staff has not received one written criticism of this rule in the last five years.

8. **Estimated economic, small business, and consumer impact**

The economic, small business, and consumer impact of the rule is moderate. The principle impact of these rules is on participating postsecondary institutions and their students. For eligible participating postsecondary institutions these rules provide the guidelines for compliance with federal and state requirements. These rules have an impact on participating institutions as the rules define guidelines such as institutional eligibility requirements; student eligibility requirements; grant award procedures; and grant award alterations and reversion procedures.

Students who are awarded these funds by participating institutions have the financial benefit of the funds to be utilized to meet a student's cost of attendance. The rules will facilitate access to higher education opportunities for those students in need of financial assistance.

Small business should not be impacted by these rules. Additionally, due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. **Business competitiveness analysis**

The Commission did not receive a business competitiveness analysis of the rules in the last five years.

**10. Completion of previous five-year-review report process**

In the last five-year-review report there were no proposed actions for this Article.

**11. Costs vs. benefits/least burden**

The rule imposes the least burden and costs to persons regulated.

**12. Stringency compared to federal law**

Federal law applies to these rules since the program was established by the federal government; Code of Federal Regulations Title 34, Subtitle B, Chapter VI, Part 692. The rules stem from federal regulations so are not more stringent than corresponding federal law.

**13. General permit compliance, A.R.S. § 41-1037**

Of the rules reviewed, none were adopted or amended after July 29, 2010.

**14. Proposed course of action**

No course of action necessary for the rule reviewed. No revisions to this rule is being made. However, R7-3-308 (Arizona LEAP Institutional Review) could be amended. Additional, information regarding R7-3-308 is referenced in the next section.

**INFORMATION FOR INDIVIDUAL RULES UNDER ARTICLE 3**

**R7-3-301. Federal LEAP Requirements**

**2. Objective of the rule**

The objective of this rule is to outline the federal government requirements for a state LEAP program. Additionally, the objective of this rule is to ensure that all other United States laws and regulations applying to the Federal-State Student Grant Program are obeyed.

**R7-3-302. Institutional Eligibility Requirements**

**2. Objective of the rule**

The objective of this rule is to identify criteria that public, nonprofit and proprietary institutions must meet to participate in the LEAP program.

**R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds**

**2. Objective of the rule**

The objective of this rule is to identify a process allowing for the receipt, allocation, transfer, disbursement, and reallocation of program funds.

## **R7-3-304. Arizona LEAP Student Eligibility Requirements**

### **2. Objective of the rule**

The objective of the rule is to further define student eligibility requirements beyond the criteria established within ARS § 15-1856. Additionally, the objective of the rule is to define substantial financial need and the procedures used to determine financial need.

## **R7-3-305. Arizona LEAP Award Procedures**

### **2. Objective of the rule**

The objective of this rule is to implement a process in which postsecondary institutions through their financial aid office may award LEAP funds to students.

## **R7-3-306. Award Alteration**

### **2. Objective of the rule**

The objective of the rule is to identify a process in which alterations to a student award may be accommodated either through increased awards or reversions.

## **R7-3-307. Administrative Costs**

### **2. Objective of the rule**

The objective of the rule is to define where administrative costs for the program may be paid from.

## **R7-3-308. Institutional Program Review**

### **2. Objective of the rule**

The objective of the rule is to define a process in which the Commission may audit institutional LEAP program records to ensure that postsecondary institutions are complying with the rules and regulations of the program.

### **5. Enforcement policy**

The rule is generally enforced as written. However, R7-3-308 references an inefficient method of institutional oversight for the small Commission staff. Current verbiage directs the Commission to visit institutions for review of program records. The Commission could more efficiently perform oversight by examining program records electronically. Additionally, performing oversight electronically would be less restrictive for the institutions being reviewed. For example, logistics related to the program review are not needed like setting up conference rooms, worrying about the audit teams accommodation, and interruptions to the institutions employees' regular workflow. Amending R7-3-308 would make the program review process easier for the institutions and the Commission.

**14. Proposed course of action**

The Commission is proposing to amend this rule in accordance with Executive Order 2020-02 by updating verbiage regarding the oversight of institutions. The Commission will request an exemption to Executive Order 2020-02 in the Fall of 2020, hold stakeholder meetings in the Spring of 2021, and submit a rulemaking revising this Article in Fall of 2021.

**R7-3-309. Definitions**

**2. Objective of the rule**

The objective of the rule is to define terms used in the LEAP program so the reader understands clearly the requirements of Article 3 and allow for consistent interpretation.

## **FIVE-YEAR-REVIEW SUMMARY**

### **Article 4. Arizona Private Postsecondary Education Student Financial Assistance Program**

Arizona Revised Statutes (A.R.S.) § 15-1854 establishes the Private Postsecondary Education Student Financial Assistance Program (PFAP) fund and definitions of the program. The Commission has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 7, Chapter 3. The rules specifying the criteria for the Private Postsecondary Education Student Financial Assistance Program for the Commission are in A.A.C. Title 7, Chapter 3, Article 4.

The rules in A.A.C. Title 7, Chapter 3, Article 4 cover the purpose; definitions; administration and allocation of funds; student eligibility; and termination of award. Rules R7-3-401 through R7-3-405 were adopted September 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act.

Through an analysis of the rules in Article 4, the Commission has determined the rules are effective, enforced as written, consistent with state and federal statutes and rules, and are clear, concise, and understandable. The Commission does not anticipate revising this Article anytime in the near future.

## **INFORMATION THAT IS IDENTICAL FOR ALL RULES UNDER ARTICLE 4**

1. **Authorization of the rule by existing statutes**

A.R.S. § 15-1854

3. **Effectiveness in achieving the objective**

The rule is effective in achieving its objective.

4. **Consistency with state and federal statutes and rules**

The rule is consistent with state and federal statutes and rules.

5. **Enforcement policy**

The rule describes processes and definitions regarding the program and is enforced as written.

6. **Clarity, conciseness, and understandability**

The rule is clear, concise, and understandable.

7. **Written criticisms of the rules received within the last five years**

The Commission staff has not received one written criticism of this rule in the last five years.

8. **Estimated economic, small business, and consumer impact**

The economic, small business, and consumer impact of the rule is moderate. The principle impact of these rules is on participating postsecondary institutions and their students. For eligible participating postsecondary institutions these rules provide the guidelines for compliance with state requirements. These rules define institutional participation guidelines such as the programs purpose; administration and allocation of funds; student eligibility requirements; and award termination procedures.

The program was designed to provide financial incentive to students who graduated from an Arizona community college to attend a private postsecondary baccalaureate-granting institution rather than an Arizona public university. Students who are awarded these funds by participating institutions have the financial benefit of the funds to be utilized to meet a student's cost of attendance. The rules will facilitate access to higher education opportunities and lighten the burden on Arizona public universities.

Small business should not be impacted by these rules. Additionally, due to the nature of the various statutory requirements, less intrusive or less costly alternatives are not available.

9. **Business competitiveness analysis**

The Commission did not receive a business competitiveness analysis of the rules in the last five years.

**10. Completion of previous five-year-review report process**

In the last five-year-review report there were no proposed actions for this Article.

**11. Costs vs. benefits/least burden**

The rule imposes the least burden and costs to persons regulated.

**12. Stringency compared to federal law**

Federal law applies to these rules since certain terminology and procedures are incorporated in the PFAP program. The rules stem from federal regulations so are not more stringent than corresponding federal law.

**13. General permit compliance, A.R.S. § 41-1037**

Of the rules reviewed, none were adopted or amended after July 29, 2010.

**14. Proposed course of action**

No course of action necessary for the rules reviewed. No revisions to these rules are being made.

**INFORMATION FOR INDIVIDUAL RULES UNDER ARTICLE 4**

**R7-3-401. Purpose**

**2. Objective of the rule**

The objective of the rule is to identify the purpose of the program and enable the reader to understand who the program aims to assist and which institutional sector is eligible to participate.

**R7-3-402. Definitions**

**2. Objective of the rule**

The objective of the rule is to define terms used in the PFAP program so the reader understands clearly the requirements of Article 4 and allow for consistent interpretation.

**R7-3-403. Administration and Allocation of Funds**

**2. Objective of the rule**

The objective of the rule is to identify procedures for the administration and allocation of funds for the PFAP program. These procedures will allow participating postsecondary institutions guidance in the awarding of funds to eligible students.

**R7-3-404. Student Eligibility**

**2. Objective of the rule**

The objective of the rule is to define student eligibility requirements including assurances for initial student recipients and returning recipients.

**R7-3-405. Termination of Award**

**2. Objective of the rule**

The objective of the rule is to identify a process in which a student is no longer eligible and a student's award shall be terminated. Termination of an award allows the remaining funds to be made available for additional awards.

**TITLE 7. EDUCATION****CHAPTER 3. COMMISSION FOR POSTSECONDARY EDUCATION**

(Authority A.R.S. § 15-1852 et seq.)

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (01-4).**Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to A.R.S. § 15-1852(C). Exemption from A.R.S. Title 41, Chapter 6 means the Commission was not required to hold public hearings; and the Governor's Regulatory Review Council did not review or approve the rules. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.***ARTICLE 1. RULEMAKING***Article 1, consisting of Sections R7-3-101 through R7-3-108, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-101.	General Provisions
R7-3-102.	Incorporation by Reference
R7-3-103.	Commission Rulemaking Reference
R7-3-104.	Notice of Oral Proceedings
R7-3-105.	Economic, Small Business, and Consumer Impact Summary
R7-3-106.	Effective Date of Rules
R7-3-107.	Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption
R7-3-108.	Oral Proceedings

**ARTICLE 2. ADJUDICATIONS***Article 2, consisting of Sections R7-3-201 through R7-3-205, adopted effective August 22, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-201.	Definitions
R7-3-202.	Contested Cases, Notice, Hearing, Records
R7-3-203.	Decisions and Orders
R7-3-204.	Hearings and Evidence
R7-3-205.	Rehearing and Decisions

**ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM***Article 3, consisting of Sections R7-3-301 through R7-3-309, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-301.	Federal LEAP Requirements
R7-3-302.	Institutional Eligibility Requirements
R7-3-303.	Receipt and Allocation of Arizona LEAP Program Funds
R7-3-304.	Arizona LEAP Student Eligibility Requirements
R7-3-305.	Arizona LEAP Award Procedures
R7-3-306.	Award Alteration
R7-3-307.	Administrative Costs
R7-3-308.	Institutional Program Review
R7-3-309.	Definitions

**ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM***Article 4, consisting of Sections R7-3-401 through R7-3-404, adopted effective September 19, 1996, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 96-3).*

## Section

R7-3-401.	Purpose
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R7-3-402.	Definitions
R7-3-403.	Administration and Allocation of Funds
R7-3-404.	Student Eligibility
R7-3-405.	Termination of Award

**ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM***Article 1, consisting of Sections R7-3-501 through R7-3-505, adopted effective October 31, 1997, under an exemption from the provisions of the Arizona Administrative Procedure Act (Supp. 97-4).*

## Section

R7-3-501.	Definitions
R7-3-502.	Fees
R7-3-503.	RFP Process
R7-3-504.	Changing Designated Beneficiary
R7-3-505.	Account Balance Limitations
R7-3-506.	Withdrawals; Reporting of Non-qualified Withdrawals; Penalties
R7-3-507.	Oversight of Financial Institutions
R7-3-508.	IRS Regulations, Rulings, Notices, and Other Guidance

**ARTICLE 1. RULEMAKING****R7-3-101. General Provisions**

- A.** Definitions. In this Article, unless the context otherwise requires:
1. "Agenda item" means a specified matter listed on an agenda included as part of the public notice of a Commission meeting pursuant to A.R.S. § 38-431.02.
  2. "Commission" means the Commission for Postsecondary Education.
  3. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.
  4. "Public meeting" means a meeting held under and subject to the Open Meeting Act, A.R.S. §§ 38-431 through 38-431.09.
  5. "Rule" means a statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of the Commission. Rule includes the amendment or repeal of a prior rule, but does not include intra-agency memoranda.
  6. "Rulemaking" means the process for formulation and adoption of a rule.
- B.** The Commission shall follow the uniform system for numbering, form and style as prescribed by the Secretary of State in the *Arizona Administrative Code*.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-102. Incorporation by Reference**

The Commission may incorporate by reference in its rules and without publishing the incorporated matter in full all or any part of a code, standard, rule, or regulation that is adopted by an agency of the United States or this state, or a nationally recognized organization or association, if incorporation of its text in Commission rules would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the Commission rules shall fully identify the incorporated matter by location, date, and shall state that the rule does not include any later amendments or editions of the incorporated matter. The Commission shall file three copies of the incorporated matter with the Secretary of State at the time the adopted rule is filed.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-103. Commission Rulemaking Record**

The Commission shall maintain an official rulemaking record for each rule proposed. The record and matter incorporated by reference shall be available for public inspection. The Commission rulemaking record shall contain all of the following:

1. Reference to the specific authority under which the rule is proposed to be adopted, amended, or repealed;
2. The name and address of Commission personnel with whom persons may communicate regarding the rule;
3. An informative summary of the proposed rule;
4. The time during which written submissions may be made and the time and place where oral comments may be made;
5. The current status of the proposed rule;
6. Any known timetable for Commission decisions or other action for the rulemaking;
7. A copy of all publications in the *Arizona Administrative Register* or a newspaper of general circulation with respect to the proposed action;
8. All written petitions, requests, submissions, and comments received by the Commission and all other written materials considered or prepared by the Commission in connection with the proposed action;
9. The official minutes of all oral proceedings regarding the rule;
10. A copy of the economic, small business, and consumer impact summary and the minutes of any public meeting at which the rule was considered by the Commission;
11. A statement of the time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule;
12. A copy of the final rule, including the date of its adoption and the date of its filing and publication.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-104. Notice of Oral Proceedings**

The Commission or its staff shall request that the Secretary of State publish in the *Arizona Administrative Register* notice of an oral proceeding concerning proposed action by the Commission regarding a rule. The notice shall include a statement of the date, time, place, and nature of the proceedings, and the name and address of Commission personnel with whom persons may communicate regarding the rule. If the Secretary of State declines to publish such information, the Commission or its staff shall cause the information to be published in a newspaper of general circulation. If an oral proceeding regarding a rule is scheduled, the Commission shall allow at

least 30 days to elapse after the publication date of the notice before adopting, amending, or repealing the rule.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-105. Economic, Small Business, and Consumer Impact Summary**

The Commission shall cause to be prepared an economic, small business, and consumer impact summary. The economic, small business, and consumer impact summary shall be a brief summary of the following information:

1. An identification of the proposed rulemaking;
2. An identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking;
3. An analysis of the probable costs and benefits from the implementation and enforcement of the proposed rulemaking on the Commission, and on any political subdivision or business directly affected by the proposed rulemaking;
4. The probable impact of the proposed rulemaking on employment in business, agencies, and political subdivisions of this state affected by the proposed rulemaking;
5. A statement of the probable impact of the proposed rulemaking on small business;
6. A statement of the probable effect on state revenues;
7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-106. Effective Date of Rules**

A rule adopted by the Commission becomes effective when a certified original and two copies of the rule are delivered to the Office of the Secretary of State unless a later date is required by the constitution of Arizona, statute, or court order, or as specified in the rule.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-107. Variance Between Adopted Rule and Published Notice of Proposed Rule Adoption**

- A. If, as a result of public comment or internal review, the Commission determines that a proposed rule requires substantial change pursuant to subsection (B), the Commission shall issue a supplemental notice containing the changes in the proposed rule, in accordance with R7-3-104. The Commission shall provide for additional public comment pursuant to R7-3-108.
- B. In determining whether a rule which the Commission intends to adopt is substantially different from the rule as originally proposed by the Commission, the following shall be considered:
  1. The extent to which the subject matter of the proposed rule or the issues determined by that rule are different from the subject matter or issues involved in the rule which the Commission intends to adopt,
  2. The extent to which the effects of the proposed rule differ from the effects of the rule which the Commission intends to adopt,

3. The extent to which all persons affected by the rule which the Commission intends to adopt should have understood that the proposed rule would affect their interests.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-108. Oral Proceedings**

- A.** When the Commission proposes a rule, such proposed action shall be presented as a specifically identified agenda item for review at a public meeting of the Commission, and such public meeting shall take place no less than 30 days prior to the public meeting at which the Commission intends to adopt, amend, or repeal the rule. At the time it proposes a rule, the Commission may schedule an oral proceeding on the proposed action. Any person may submit written statements, arguments, and supporting data on the Commission's proposed action to the Executive Director of the Commission within 30 days following the date the Commission proposes the rule.
- B.** The Commission shall schedule an oral proceeding on a proposed rule if, within 30 days after proposing the rule, a written request for an oral proceeding is submitted to the Commission by no fewer than five persons. An oral proceeding may not be held earlier than 30 days after notice of its date, location, and time is published. If an oral proceeding is scheduled, the Commission shall post, in a location as required for notice of a public meeting, a written notice of the place and date of the proceeding no less than 20 days in advance thereof. The Commission, a member of the Commission, or an official of the Commission's staff designated by the Commission, shall preside at the oral proceeding. At the oral proceeding, minutes of the meeting shall be taken and persons may present oral argument, views, and supporting data on the proposed rule. The person presiding at the hearing shall exclude unduly repetitious argument.
- C.** Prior to its meeting at which it intends to adopt, amend, or repeal a rule, the Commission shall be provided with a copy of the proposed action; an informative summary of such action; a memorandum summarizing the written public comment received; the economic, small business, and consumer impact summary; and the minutes of any oral proceeding regarding the proposed action. The Commission shall consider all such information prior to adopting, amending, or repealing the rule.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**ARTICLE 2. ADJUDICATIONS**

**R7-3-201. Definitions**

In this Article, unless the context otherwise requires:

1. "Commission" means the Commission for Postsecondary Education, including the state postsecondary review entity, acting in accordance with responsibilities as prescribed by A.R.S. § 15-1851(A).
2. "Contested case" means any proceeding in which the legal rights, duties, or privileges of a party are required by law to be determined by the Commission after an opportunity for hearing.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-202. Contested Cases, Notice, Hearing, Records**

- A.** In a contested case, the parties shall be afforded an opportunity for hearing after reasonable notice. The notice shall be given at least 20 days prior to the date set for the hearing.
- B.** The notice shall include:
1. A statement of the time, place, and nature of the hearing;
  2. A statement of the legal authority and jurisdiction under which the hearing is to be held.
  3. A reference to the particular Sections of the statutes and rules involved.
  4. A short and plain statement of the matters asserted. If a party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.
- C.** Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Informal disposition may be made of any contested case by stipulation, agreed settlement, consent agreement, or default.
- D.** The record in a contested case shall include:
1. All pleadings, motions, and interlocutory rulings;
  2. Evidence received or considered;
  3. A statement of matters officially noticed;
  4. Objections and offers of proof and rulings thereon;
  5. Proposed findings and exceptions;
  6. Any decision, opinion, or report by the officer presiding at the hearing;
  7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the Commission in connection with their consideration of the case.
- E.** A hearing before a hearing officer or the Commission in a contested case or any part thereof shall be recorded manually or by a recording device and shall be transcribed on request of any party, unless otherwise provided by law. The cost of such transcript shall be paid by the party making the request, unless otherwise provided by law or unless assessment of the cost is waived by the Commission.
- F.** Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-203. Decisions and Orders**

Any final decision or order adverse to a party in a contested case shall be in writing or stated in the record. Any final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Parties shall be notified either personally or by mail to their last known address of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to the party's attorney of record.

**Historical Note**

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

**R7-3-204. Hearings and Evidence**

- A.** A hearing in a contested case shall be conducted in an informal manner and without adherence to the rules of evidence required in judicial proceedings. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. A party to such

proceedings shall have the right to be represented by counsel, to submit evidence in open hearing, and shall have the right of cross examination. Hearings may be held in any place determined by the Commission or its hearing officer.

- B. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, the parties shall be given an opportunity to compare the copy with the original.
- C. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the specialized knowledge of the Commission. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The Commission's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

#### Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

#### R7-3-205. Rehearing of Decisions

- A. A party in a contested case before the Commission who is aggrieved by a decision rendered in such case may file with the Commission not later than 20 days after receipt of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. A motion for rehearing or review under this Section may be amended at any time before it is ruled upon by the Commission. A response may be filed within 10 days after service of such motion by any other party. The Commission may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- B. A rehearing or review of a decision may be granted for any of the following causes materially affecting the moving party's rights:
  1. Irregularity in the administrative proceedings of the Commission or its hearing officer, or abuse of discretion, whereby the moving party was deprived of a fair hearing;
  2. Misconduct of the Commission or its hearing officer or the prevailing party;
  3. Accident or surprise which could not have been prevented by ordinary prudence;
  4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;
  5. Excessive or insufficient penalties;
  6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;
  7. That the decision is not justified by the evidence or is contrary to the law.
- C. The Commission may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons set forth in subsection (B). An order granting a rehearing or review shall specify with particularity the ground or grounds on which the rehearing or review is granted, and the rehearing or review shall cover only those matters so specified.
- D. Not later than 20 days after a decision is rendered, the Commission may on its own initiative order a rehearing or review of its decision for any reasons for which it might have granted a rehearing or review on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Commission may grant a motion for rehearing or review for a reason not stated in the motion. In either

case, the order granting such a rehearing or review shall specify the grounds therefor.

- E. When a motion for rehearing or review is based upon affidavits they shall be served with the motion. An opposing party may within 10 days after service of such motion serve opposing affidavits and this period may be extended for an additional period not exceeding 20 days by the Commission for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

#### Historical Note

Adopted effective August 22, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3).

### ARTICLE 3. ARIZONA LEVERAGING EDUCATIONAL ASSISTANCE PARTNERSHIP PROGRAM

#### R7-3-301. Federal LEAP Requirements

The federal government requires that a state LEAP Program must:

1. Be administered by a single state agency in accordance with the Federal-State Agreement under Section 1203 of the Higher Education Act, as amended. The Governor of Arizona has designated as the responsible single state agency the Arizona Commission for Postsecondary Education, which hereafter shall be referred to as the Commission;
2. Award grants only to students who meet the eligibility and financial need requirements as outlined in R7-3-304(A) and (B);
3. Provide grants which do not exceed \$5,000 per program year for a full-time student enrolled in an eligible program at a participating postsecondary institution;
4. Use as state matching funds an amount which is over and above the amount the state expended for grants in the initial program year of FY 1974;
5. Provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of the accounting for federal funds paid to the state;
6. Provide for making such reports, in such form and containing such information, as may be reasonably necessary to enable the U.S. Secretary of Education to perform program analysis;
7. Provide for the payment of the state matching fund share of grants awarded from direct state appropriated funds;
8. Provide that no payment may be made to a student under this program unless the student meets the requirements specified in R7-3-304;
9. Obey all other United States laws and regulations applying to the Federal-State Student Grant Program;
10. Provide that all institutions of higher education in Arizona which meet the eligibility requirements of R7-3-302 shall be eligible to participate in the program;
11. Provide that state expenditures shall not be less than:
  - a. The average annual aggregate expenditures for the preceding three years; or
  - b. The average annual expenditure per full-time equivalent student for those years.
12. Provides assurances that all LEAP grants will be awarded without regard to sex, race, debilitating condition, creed, or economic background.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-302. Institutional Eligibility Requirements**

To participate in the Arizona LEAP Program, an Arizona postsecondary educational institution must either:

1. Be a public or other nonprofit institution of higher education which:
  - a. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
  - b. Is legally authorized by the state of Arizona to provide an educational program beyond secondary education;
  - c. Provides an educational program for which it awards an associate, baccalaureate, graduate, or professional degree, or at least a two-year program which is acceptable for full credit toward a baccalaureate degree; or at least a one-year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or at least a six-month training program at a postsecondary vocational institution (such as a public community college) which leads to a certificate or degree and prepares students for gainful employment;
  - d. Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution which has satisfactorily assured the Secretary that it will meet the accreditation standards of an approved agency or association within a reasonable time, considering the resources available to the institution, the period of time it has operated and its efforts to meet accreditation standards, or is an institution whose credits are determined by the Secretary to be accepted on transfer by at least three accredited institutions on the same basis as transfer credits from fully accredited institutions.
  - e. Has a certified Eligibility Letter and a valid written Program Participation Agreement from the Department of Education cited in 34 CFR 668.
2. Be a proprietary institution of postsecondary education which:
  - a. Is not a public or other nonprofit institution;
  - b. Admits as regular students only persons who have a high school diploma, have the recognized equivalent of a high school diploma, or are beyond the age of compulsory school attendance in the state in which the institution is located, and who have the ability to benefit from the training offered;
  - c. Is legally authorized to provide postsecondary education in the state of Arizona;
  - d. Provides at least a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
  - e. Is accredited by a nationally recognized accrediting agency or association; and
  - f. Has been in existence for at least two years. The Secretary considers a school to have been in existence for two years if it has been legally authorized to provide, and has provided, a continuous training program to prepare students for gainful employment in a recognized occupation during the 24 months (except for normal vacation periods) preceding the date of application for eligibility.
  - g. Refer to this subsection (1)(e).

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-303. Receipt and Allocation of Arizona LEAP Program Funds**

- A. Receipt of funds.
  1. The Commission may receive funds for the Arizona LEAP Program from the following sources:
    - a. The federal government;
    - b. The Arizona Legislature;
    - c. Institutions which are eligible to participate in the program; and,
    - d. Other nonfederal institutions, organizations, or individuals.
  2. All funds received will be deposited by the Commission in a properly secured account and appropriate controls will be instituted to assure that accountability will be maintained for all funds received.
  3. Available federal program funds will be matched, on a dollar-for-dollar basis, by state appropriated funds.
  4. Funds provided by the eligible participating institutions and nonfederal funds from other institutions, organizations, or individuals shall be used by the Commission to supplement the federal and state program funds for grants and for necessary administrative costs.
- B. Allocation of funds.
  1. Arizona LEAP Program Funds will be allocated to eligible Arizona postsecondary educational institutions according to their proportionate share of the State's total headcount of Arizona resident students enrolled in eligible programs. The Commission will survey each eligible institution in Arizona no later than May of each year to determine the number of eligible Arizona resident students who are enrolled. Headcount will be determined in the following manner:
    - a. Semester or quarter hour schedule institutions will provide data for the preceding fall semester. (For example, allocations for the LEAP program for any given academic year will be based on enrollment data from the previous academic year.)
    - b. Institutions which operate on clock hour or other nontraditional schedules will provide unduplicated student enrollment data for the period from August through April of the previous year. (For example, allocations for the LEAP program for any given year will be based on data for the period August through April.) Enrollment data must be verified by two Administrative Officials of the school.
  2. The staff will promptly notify each eligible institution of its preliminary allocation as soon as necessary Commission approvals can be obtained. The total will show the amount of federal and state dollars and also the amount the institution must provide to receive the full allocation. The institution will be asked to select one of the following choices:
    - a. It will provide the full amount of institutional funds in order to receive the full allocation.
    - b. It will provide the full amount of institutional funds and also is prepared to provide additional institutional funds if additional federal and state funds should become available. The institution will be asked to specify the amount of additional institutional funds it will be able to provide.

- c. It prefers to provide a lesser amount which will be noted in the space provided. In this case the federal and state amounts will be adjusted to meet the reduced institutional amount.
  - d. It chooses not to participate in the LEAP program for this period. In this case it is important that the institution return the form to the Commission to inform them of this choice.
3. A response due date will be included in this notification. Only institutions whose response is received by the Commission by that due date will be eligible to participate in the LEAP Program for that academic year.
  4. All institution responses which are received by the Commission on or before the response due date will determine the final list of institutions eligible to participate in the LEAP program. If all institutions elect to participate, the preliminary allocation will become the final allocation list. However, if some institutions choose not to participate, or if some prefer to participate at a reduced level, the staff will calculate a new final allocation list considering only the institutions on the final institutional eligibility list. The staff will then notify each participant institution of its revised allocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
  5. The Commission will maintain the necessary accounts for each eligible institution which participates in the Arizona LEAP Program. Each account will, as a minimum, show the current status of that account for its source of program funds, and such other information that the Commission deems necessary.
- C.** Transfer of institutional funds. When the institution receives its final allocation notice from the Commission, it shall send its institutional funds to the Commission. This transfer shall take place beginning July 1 of each year. Checks conveying institutional funds shall be made out to the Arizona Commission for Postsecondary Education -- LEAP Program.
- D.** Disbursement of Arizona LEAP Program Funds to Participating Institutions. The Commission will disburse funds from the Arizona LEAP Program Fund to participating institutions for further disbursement to approved student applicants in accordance with the program calendar.
- E.** Reallocation of Unused LEAP Program Funds
1. Schools will be contacted in February, and asked if they will be able to use all their funds or if they wish additional funding and the amount thereof.
  2. Schools not awarding 100% of their funds by the middle of February may have the remaining LEAP funds recovered by the Commission for reallocation. Remaining institutional funds, less administrative funds, will then be returned to each of those schools when the final program financial report has been received by the Commission.
  3. In March, a reallocation of funds will take place and funds will be available for those schools that asked for additional funds in February.
    - a. If the amount of available funds exceeds the total amount of requests, all requests will be honored. Any remaining available funds will be retained by the Commission for later reallocation.
    - b. If the amount of the requests exceeds the amount of available funds, the Commission will allocate those funds among the requesting institutions based on each institution's proportionate share of Arizona resident students eligible headcount for that institution. The enrollment at non-requesting institutions will not be included in these calculations.
  4. The staff will notify each participant institution of its share of the reallocation, the amount of institutional funds to provide, and instructions for transmitting its funds to the Commission.
  5. Any LEAP funds retained by the institutions, minus the institutional proportionate share originally paid, must be returned to the Commission in the form of a check by the end of July, along with the signed Financial Report. Any unused program funds remaining in the state treasury will be returned to the institutions in the same proportionate share as was paid in at the beginning of the program year. The Commission may impose a deduction in the amount of those unutilized program funds from a school's following years allocation.
- Historical Note**
- Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).
- R7-3-304. Arizona LEAP Student Eligibility Requirements**
- A.** Student eligibility requirements. To be eligible for a grant from the Arizona LEAP Program, a student must:
1. Be a resident of the State of Arizona as defined by the A.R.S. §§ 15-1802, 15-1803, 15-1804, and 15-1805;
  2. Be enrolled or accepted for enrollment on at least a half-time basis as defined in R7-3-309(A)(20) in an eligible course or program at an Arizona postsecondary educational institution which has met the institutional eligibility requirements in R7-3-302, and which has been approved by the Commission.
  3. At the discretion of the institution financial aid officer, this may include a person who has attained a baccalaureate or first professional degree and has re-entered an eligible Arizona postsecondary institution for retraining in a program below the baccalaureate level. Such a person will be considered an undergraduate student for LEAP purposes.
  4. Have a substantial demonstrated financial need determined in accordance with the provision given in R7-3-304(B);
  5. Maintain satisfactory progress in a course of study as defined by the institution and not be in default or owe a repayment on a federal grant or loan. Refer to 34 CFR 692.
- B.** Financial Need Determination Procedures. The financial need of eligible students will be determined annually, or more often if need be, by the financial aid officer of the institution the student is attending, or will attend, using the Federal Methodology (FM) system of need analysis approved by the Commission and the U.S. Department of Education. A student must be considered to have substantial need.
- C.** A student is considered to have substantial financial need when:
1. The student has an expected family contribution of \$2,140 or less as a result of the student's FM need analysis for the program year; or,
  2. The difference between the student's cost of education and the student's expected family contribution is at least \$100.
- Historical Note**
- Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt

rulemaking at 5 A.A.R. 2046, effective June 1, 1999  
(Supp. 99-2).

**R7-3-305. Arizona LEAP Award Procedures**

- A.** Eligible students who wish to apply for a LEAP award will provide to the financial aid office the information needed for the financial need analysis as specified in R7-3-304(B).
- B.** The financial aid office will:
1. Determine whether or not the student meets the eligibility requirements for an Arizona LEAP award as outlined in R7-3-304(A);
  2. Determine the financial need of the student using the need analysis specified in R7-3-309(B);
  3. Exercise due diligence in determining that the student:
    - a. Satisfies verification procedures which may be required for federal Title IV financial aid programs;
    - b. Satisfies requirements listed under 34 CFR 692.4.
  4. Recommending the amount of the LEAP award in accordance with the following guidelines:
    - a. Awards may be made only to students who meet the criteria of R7-3-304(A);
    - b. The total of all LEAP awards to a student may not exceed \$2,500 for the program year;
    - c. The financial aid officer will determine, based on student need, an award of no more than \$2,500 nor less than \$100 (round all awards to the nearest \$1.00).
    - d. The financial aid officer must ensure that all applications are received in a timely fashion so disbursement of funds to students will be made before a semester or training period ends.
    - e. Sign the application form.
  5. Send the application form to:  
Arizona Commission For Postsecondary Education  
2020 North Central Avenue, Suite 275  
Phoenix, Arizona 85004-4503  
(Attention: Financial Aid Director)
  6. Receive approved applications, assure that LEAP award funds are disbursed to the student, and retain on file disbursement records (signed receipts, canceled checks, etc.) which verify that the student received the funds. No disbursement may be made to a student who, as a result of a change in status, no longer meets the eligibility requirements outlined in R7-3-304.
  7. Maintain adequate fiscal control, accounting, and financial aid records at the institution in accordance with approved state and federal procedures.
  8. Provide to the Commission such financial and other information as may be required to meet federal reporting and auditing requirements.
- C.** The Arizona Commission for Postsecondary Education will:
1. Receive the application for the Arizona LEAP award;
  2. Verify that the student is eligible and that there are sufficient funds in the LEAP program account to fund the award;
  3. Approve applications which meet these criteria;
  4. Return applications that do not meet the criteria or are in any way incomplete to the financial aid office;
  5. Disburse funds to the institution's financial aid officer for the approved applications.

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-306. Award Alterations**

- A.** The Commission will attempt to accommodate any changes which institutional financial aid officers wish to make in individual student awards. These changes might include, for example, cancellation of award, reduction in award level, or increase in award level.
1. Increased LEAP Awards: A student's LEAP award may be increased if the earlier award for that program year is less than the maximum amount specified, and if the student is eligible for such an increase. To increase a LEAP award, the institutional financial aid officer will simply submit to the Commission another LEAP application form, and provide updated financial aid information on the form. In no case may a student receive more than a total of \$2,500 in LEAP awards for a program year.
  2. Reversions: A student's LEAP award may be reduced or canceled. If a student officially or unofficially withdraws or is expelled from the institution, or if the student drops below the minimum number of hours, the institution financial aid officer must attempt to recover all of LEAP award funds possible in accordance with the repayment policies of that institution.
  3. The reversion procedure includes the following steps:
    - a. Funds are recovered from the student;
    - b. The financial aid officer completes the LEAP Reversion Form;
    - c. The financial aid officer forwards the completed LEAP Reversion Form(s) and the Transmittal Form to the Commission.
  4. Reverted LEAP funds recovered by the Commission are redeposited in the secured LEAP program account and credited to the institution's LEAP Program Fund account. Such funds are then available to the institution to be used to make new LEAP awards.

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-307. Administrative Costs**

No federal LEAP funds may be used to administer the Arizona LEAP Program. Therefore, administrative expenses will be paid from nonfederal state appropriated or institutional program funds provided such payment does not reduce state appropriated matching funds necessary to receive the maximum federal LEAP funds.

**Historical Note**

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

**R7-3-308. Arizona LEAP Institutional Review**

Commission staff members will review Institutional LEAP Program records for each program year, and each institution participating in the LEAP program will be visited at least once every two years. The purpose of the visit is to review, with institution financial aid and fiscal officers, the LEAP student records which state and federal regulations require be kept. Those records include documentation which verifies that:

1. The student is a resident of the state of Arizona as prescribed by Arizona Revised Statutes.
2. The student is currently enrolled at least half-time in an eligible course or program.

3. The student has a demonstrated need for financial assistance as determined by a Federal Methodology needs analysis system approved by the Commission and the U.S. Department of Education.
4. The student has received the LEAP funds approved for the award (for example, a canceled check, a written receipt, a signed roster, etc.).
5. The institutional financial aid officer must assure that the total amount of financial aid awarded to a student, from all sources, added to the amount of the family contribution, is limited by and does not exceed the student's total cost of education. The LEAP award limits and the treatment of any additional funds which were received after the institutional aid awards were made shall be consistent with the federal regulations which govern the Federal Title IV, Campus-based programs.
6. Repayments and refunds of LEAP disbursements which have been made to students shall be made in accordance with the written policies of the institution. These written policies must be consistent with applicable federal regulations and a copy must be filed at the Commission office at the beginning of each LEAP program year.
7. Verify that the institution has a Certified Letter of Eligibility and a valid Program Participation Agreement from the Department of Education cited in 34 CFR 668.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

#### R7-3-309. Definitions

The following definitions are taken from the Federal Regulations which govern the LEAP program and apply to this Plan as well.

1. "Academic year" means a period of time, usually eight to nine months, during which a full-time student would normally be expected to complete the equivalent of two semesters (24 semester hours), two trimesters (24 trimester hours), three quarters (36 quarter hours), or 900 clock hours of instruction.
2. "Act" means the Higher Education Act of 1998, as amended, of Title IV.
3. "Board" means the Arizona Board of Regents.
4. "CFR" means the Code of Federal Regulations.
5. "Clock hour" means a period of time which is the equivalent of a 50 to 60 minute class, lecture, or recitation, or a 50 to 60 minute period of faculty-supervised laboratory, shop training, or internship.
6. "Commission" means the Commission for Postsecondary Education.
7. "Cost of education" means the cost of attending an institution as defined by the institution.
8. "Dependent student" is a student who does not qualify as an Independent Student.
9. "Eligible course or program" is one which is properly approved by an accrediting agency recognized by the U.S. Department of Education as being an integral part of the curriculum of the institution, is of postsecondary level, and is at least one semester in length at a college or university, or six months in length, or a minimum of 600 clock hours at a proprietary institution.
10. "Expected family contribution of a dependent student" means the sum of amounts which reasonably may be expected from the student to meet the student's costs of education and the amount which reasonably may be expected to be made available to the student by the student's parents for such purpose. Amount is calculated based upon the Federal methodology need analysis for current program year.
11. "Expected Family Contribution of an Independent Student" means the amount which reasonably may be expected from the student or their spouse, or both, to meet the student's cost of education. Amount is calculated based upon the Federal methodology need analysis for current program year.
12. "Federal methodology" means the methodology now mandated by federal regulation for determining financial need for federally funded programs.
13. "Full-time undergraduate student" means a student who has not attained the baccalaureate or first professional degree and who is carrying a full-time academic work load, other than by correspondence, measured in terms of:
  - a. Course work or other required activities as determined by the institution in which the student is enrolled, or by the state whose agency is administering the program authorized by the Act, which amounts to the equivalent for institutions utilizing trimester, semester, or quarter hour systems, or which consists of a program requiring a minimum of 24 clock hours per week in a program of at least six months or 600 clock hours for those institutions that do not utilize such systems.
  - b. The tuition and fees customarily charged for full-time study by the institution.
14. "Full-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of nine semester, trimester, or quarter hours during a normal length term or five hours during a summer session.
15. "Independent" means an independent student as defined by federal regulations.
16. "Program funds" means the awards; reversions (reverted/retained); and un-utilized Funds:
  - a. Awards: Awarded LEAP Funds are dollars given in the form of grants to eligible students attending eligible postsecondary institutions.
  - b. Reversions:
    - i. Reverted LEAP funds are funds that have been awarded and because student is no longer eligible are returned to the Commission for re-use at a later date.
    - ii. Reverted Retained LEAP funds are those funds that institutions have kept and not transferred back to the Commission after the student who has been awarded is considered ineligible for LEAP award.
  - c. Un-utilized: Un-utilized LEAP Program Funds are those Funds that have never been awarded to a student by an eligible institution.
17. "Public or private nonprofit institution of higher education" means an educational institution which:
  - a. Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate.
  - b. Is legally authorized to provide a program of education beyond secondary education.
  - c. Provides an educational program for which it awards an associate, baccalaureate, or professional degree

- or at least a two-year program which is acceptable for full credit towards a baccalaureate degree, or at least a six-month vocational program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation.
- d. Is accredited by a nationally recognized accrediting agency or association or, if not so accredited,
- i. Is an institution with respect to which the Commission has determined that there is satisfactory assurance, considering the resources available to the institution, the period of time, if any, during which it has operated, the effort it is making to meet accreditation standards, and the purpose for which this determination is being made, that the institution will meet the accreditation standards of such an agency or association within a reasonable time, or
  - ii. Is an institution whose credits are accepted on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited. This term also includes a public or nonprofit private educational institution which, in lieu of the requirement in this subsection 309(A)(16)(d)(i) admits as regular students persons who are beyond the age of compulsory school attendance in the state in which the institution is located and who have the ability to benefit from the training offered by the institution.
18. "Nonprofit" as applied to a school, agency, organization, or institution means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which may lawfully inure to the benefit of any private shareholder or individual.
19. "Parent" means the student's mother or father, or both, legal guardians or legally adoptive parents. This does not include foster parents.
20. "Part-time undergraduate student" is a student who is enrolled at least half-time, but less than full-time, in an eligible program at an eligible and participating Arizona institution. In no case will this be less than six semester, trimester or quarter hours per academic term (including one summer session), or less than 12 clock hours per week for institutions which utilize a clock hour system.
21. "Part-time graduate student" is a student who has attained a baccalaureate or first professional degree, has been accepted by the graduate college, and is enrolled in an approved graduate level program at an accredited university or college for a minimum of six semester, trimester, or quarter hours during any term, including summer sessions.
22. "Postsecondary education institution" means an educational institution which offers courses or training programs which are beyond the high school level in scope and complexity and which are open to the general public. Major categories are public universities, private colleges and universities, community colleges and proprietary institutions.
23. "Program Year" means the consecutive period which begins on July 1 and runs through June 30 of any given year.
24. "Proprietary institution of higher education" means an educational institution:
- a. Which provides not less than a six-month or 600 clock hour program of training to prepare students for gainful employment in a recognized occupation;
  - b. Which admits as regular students only persons having a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance and who have the ability to benefit from the training offered;
  - c. Which is legally authorized by the state in which it is located to provide a program of education beyond secondary education;
  - d. Which is accredited by a nationally recognized accrediting agency or association approved by the U.S. Commissioner of Education for this purpose;
  - e. Which is not a public or other nonprofit institution; and
  - f. Which has been in existence for at least two years. The term also includes any proprietary institution which offers degrees at the associate, baccalaureate or graduate level, and which has an agreement with the U.S. Secretary of Education containing the terms and conditions which the Secretary determines to be necessary to ensure that the availability of assistance to students at the school under this program has not resulted, and will not result, in an increase in the tuition, fees, or other changes to students.
25. "State" means, in addition to the several states of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and Trust Territory of the Pacific Islands, and the Virgin Islands.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2046, effective June 1, 1999 (Supp. 99-2).

### ARTICLE 4. ARIZONA PRIVATE POSTSECONDARY EDUCATION STUDENT FINANCIAL ASSISTANCE PROGRAM

#### R7-3-401. Purpose

The purpose of the Arizona Private Postsecondary Education Student Financial Assistance Program is to enhance the educational opportunities of citizens wishing to attend Arizona private postsecondary colleges or universities by providing financial assistance to eligible students attending eligible postsecondary institutions.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-402. Definitions

- A. "Award year" means the period from July 1 through June 30 of the succeeding year.
- B. "Commission" means the Commission for Postsecondary Education.
- C. "Eligible postsecondary institution" means any private postsecondary institution:
  1. Licensed to provide baccalaureate degrees in Arizona by the Arizona State Board for Private Postsecondary Education; and

2. Accredited by an accrediting body recognized by the United States Department of Education.
- D.** "Eligible student" means an individual who:
1. Has obtained an associate degree from a community college under the jurisdiction of the Arizona State Board of Directors for Community Colleges; and
  2. Enrolls as a full-time undergraduate student at an eligible postsecondary institution.
- E.** "Enrollment" means the establishment and maintenance of an individual's status as a student in an eligible postsecondary institution, regardless of the definition used at that institution.
- F.** "FAFSA" means Free Application for Federal Student Aid.
- G.** "Financial need" means the cost of attendance less expected family contribution, determined from the student's FAFSA form, minus any grant or scholarship aid.
- H.** "Full-time student" means an individual who is enrolled in at least 12 credit hours per semester or an equivalent calculation.
- I.** "Undergraduate student" means an individual who has not earned a baccalaureate or professional degree and who is enrolled in a postsecondary educational program which leads to, or is creditable toward, a baccalaureate degree.
- J.** "Student financial assistance" means awarding a grant of money to an eligible, undergraduate student for payment of tuition and fees, as defined and allowed under United States Department of Education Title IV student assistance analysis, at an eligible postsecondary institution.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-403. Administration and Allocation of Funds

- A.** The Commission shall administer the Arizona Private Postsecondary Education Student Financial Assistance Program in accordance with A.R.S. § 15-1854 and the rules promulgated thereunder. Administration shall include but not be limited to the award of vouchers to eligible students approved by the Commission.
- B.** The Commission shall maintain financial records of all disbursements made under the Program. These records shall include the amount of each student grant and the award year for which it was disbursed.
- C.** The Commission shall allocate private postsecondary education student financial assistance grant funds to eligible students based on methodology approved by the Commission under these rules.
- D.** Any funds which have been allocated to a student, but are not used by that student, shall be reallocated by the Commission in a subsequent award year.
- E.** Student financial assistance will be awarded to renewal students as first priority and then to new students in the order of receipt of completed applications. In the event that there are more new eligible students in an award year than available vouchers for new students, awards shall be made in the following priority:
1. Date of receipt of a completed application,
  2. Highest grade point averages for the associate degree.
- F.** Student financial assistance in the amount up to \$1,500 may be disbursed to an eligible student for an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
  2. The initial expiration of the institution's refund time period for United States Department of Education Title IV student assistance during the award year. The institution shall then repay the Commission the applicable proportion of the annual award if the eligible student is not enrolled full-time on the date of the expiration of the institution's refund policy during any subsequent portion of the award year.
- G.** Student financial assistance in the amount up to \$750 may be awarded to an eligible student for half of an award year. An amount representing the student financial assistance award shall be paid to the eligible institution towards tuition and fee charges following:
1. Receipt by the Commission of an institutional certification of full-time attendance by the eligible student; and
  2. The expiration of the institution's refund time period for United States Department of Education Title IV student financial assistance.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-404. Student Eligibility

- A.** To be considered for an initial private postsecondary education student financial assistance, an eligible student, as defined in R7-3-402(D) and R7-3-402(G), shall submit a complete private postsecondary education student financial assistance program application to the Commission. The application shall contain:
1. Assurance of acceptance at an eligible institution;
  2. Assurance of attendance as a full-time student;
  3. Written authorization to inspect any of the academic or financial records of the student which are in the possession or under the control of the institution, which records are necessary to the proper administration of the provision of the Program and the regulations promulgated thereunder;
  4. A signed statement certifying the student's understanding that the award will be used for tuition and fee expenses only; and
  5. Agreement to reimburse the Commission the total amount of Program awards in the event the student fails to receive a baccalaureate degree within a three-year period of the receipt of the initial student financial assistance award.
- B.** To be eligible for a renewal of a private postsecondary education student financial assistance, a student shall:
1. Meet the conditions of R7-3-402(D);
  2. Provide verification of full-time enrollment and satisfactory academic progress as determined by the institution for the previous award year; and
  3. Not have exceeded a cumulative total of \$3,000 in awards.

#### Historical Note

Adopted effective September 19, 1996, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 96-3). Amended by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

#### R7-3-405. Termination of Award

- A.** Student financial assistance shall be terminated if:
1. A student has withdrawn from the PFAP program; or

2. A student has been dismissed from the institution for academic or other reasons; or
  3. A student is not in attendance for more than 12 consecutive months.
- B.** The remaining student financial assistance award money designated for that student shall no longer be available to that student. This money shall be available for awards to other eligible students.

**Historical Note**

Adopted by exempt rulemaking at 5 A.A.R. 2006, effective May 24, 1999 (Supp. 99-2).

**ARTICLE 5. ARIZONA FAMILY COLLEGE SAVINGS PROGRAM**

**R7-3-501. Definitions**

- A.** "Account year" means the period beginning on October 1 and ending on September 30 of each year.
- B.** "A.R.S." means Arizona Revised Statutes.
- C.** "Cash" means currency, bills and coin in circulation, or converting a negotiable instrument to cash by endorsing and presenting to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer will be treated as cash. Deposits will also be accepted by credit card.
- D.** "Code" means the Internal Revenue Service Code of 1986, as amended, or the corresponding provision of any future United States Internal Revenue law.
- E.** "Commission" means the Commission for Postsecondary Education as defined in A.R.S. § 15-1871.
- F.** "Committee" means the Family College Savings Program Oversight Committee as defined in A.R.S. § 15-1871.
- G.** "Distributee" means the designated beneficiary or the account owner who receives or is treated as receiving a distribution from an account. If a distribution is made directly to the designated beneficiary or to an eligible educational institution for the benefit of the designated beneficiary, the designated beneficiary is the distributee. In all other circumstances, the account owner is the distributee.
- H.** "Eligible educational institution" means an institution of higher education that qualifies under § 529 of the Code as an eligible educational institution.
- I.** "Negotiable instrument" means negotiable instrument as defined in A.R.S. § 47-3104.
- J.** "Qualified Tuition Program" means a qualified tuition program as defined in § 529 of the Code.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 486, effective January 9, 2002 (Supp. 02-1). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

**R7-3-502. Fees**

- A.** Application fee. The application fee is \$10. Application fees shall be forwarded to the Commission at the end of the month in which the account is opened. A financial institution may waive the application fee but will nevertheless be responsible for tendering to the Commission \$10 for each new account

opened; said tender to be made at the end of the month in which the account is opened. The Commission shall review the application fee every 24 months and recommend to the Commission whether the application fee should be adjusted.

- B.** Administrative fee. For each account opened, the financial institution shall pay to the Commission a one-time fee of \$3 at the end of the month in which the account was opened. The Commission shall review the administrative fee every 24 months and recommend to the Commission whether the administrative fee should be adjusted. The financial institution shall not charge the account owner the administrative fee.
- C.** Marketing fee. The financial institution shall pay to the Commission an annual marketing fee. The marketing fee shall be paid at the beginning of each calendar year as a \$200 flat fee. If a financial institution begins participating in the Arizona Family College Savings Program after the beginning of a calendar year, the financial institution shall pay a pro-rated marketing fee based upon the month in which it begins participation in the Program regardless of the day in the month. The Commission shall review the marketing fee every 12 months and recommend to the Commission whether the marketing fee should be adjusted. The Commission may review the marketing fee prior to the committee's required 12-month review. The financial institution shall not charge the account owner the marketing fee.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

**R7-3-503. RFP Process**

The Commission may require any and all information for participation, including the ability of the investment instruments to track estimated costs of higher education as calculated by the Commission.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4).

**R7-3-504. Changing Designated Beneficiary**

An account owner may change the designated beneficiary so long as the new designated beneficiary is a member of the family, as defined in A.R.S. § 15-1871(8), of the previously named designated beneficiary. The account owner must certify and provide to the financial institution the name, address, social security number, and relationship of the new designated beneficiary to the previously named designated beneficiary. The change shall be effective upon the financial institution's receipt of such certification.

**Historical Note**

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4).

**R7-3-505. Account Balance Limitations**

- A.** For each designated beneficiary, the balance in all qualified tuition programs, as defined in § 529 of the Code, shall not exceed the lesser of:
1. The product (rounded down to the nearest multiple of \$1000) of 7 and the average one year's undergraduate tuition, fees, room and board at the ten independent four

year eligible educational institutions as measured and last published by the College Board's Independent College 500 Index that have the largest total direct charges. For purposes of this subsection, "total direct charges" means the charges determined for each eligible educational institution by multiplying the eligible educational institution's undergraduate enrollment by the reported tuition, fees, room and board for an on-campus student at the eligible educational institution; or

2. The cost in current dollars of qualified higher education expenses the account owner reasonably anticipates the designated beneficiary will incur.
- B.** No person shall make any contribution to a qualified tuition program during an account year that would cause the sum of the account balances in all qualified tuition programs of the designated beneficiary as of the first day of the account year plus contributions made during the account year less withdrawals during the account year to or from any such account to exceed the maximum allowable balance set forth in subsection (A). Any excess contributions with respect to a designated beneficiary shall be promptly withdrawn as a non-qualified withdrawal or transferred to another account in accordance with A.R.S. § 15-1875(F).
- C.** No financial institution shall accept for deposit in any account a contribution if the contribution would cause the sum of the values (as of the beginning of an account year) of all qualified tuition programs of the designated beneficiary that are managed by the financial institution and contributions to such accounts less withdrawals from such accounts during the account year to exceed the maximum allowable balance set forth in subsection (A).
- D.** Each year, the Commission shall review the amounts set forth in subsection (A).
- E.** Persons making a contribution to an account shall certify that as to the account's designated beneficiary, and to the best of the contributor's knowledge, the contribution shall not cause the balances in all qualified tuition programs to exceed the account balance limitations described in subsection (A).
- F.** If the Commission determines that contributions have been made to program accounts in violation of subsection (B) or (C), it shall notify the designated beneficiary and the account owners of all accounts of such designated beneficiary. The account owners shall have 60 days after receipt of such notice to reduce the balances of the qualified tuition programs through distributions and/or changes in beneficiaries to a level less than or equal to the maximum account balance described in subsection (A). If the balances are not appropriately reduced, the Commission will disqualify such accounts in reverse order of their date of opening until the sum of the balances in the accounts does not exceed the maximum allowable balance set forth in subsection (A). This subsection shall not apply to any contribution made at a time when such contributions did not cause the account balance limits to be exceeded.

#### Historical Note

Adopted effective October 31, 1997, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 97-4). Section repealed; new Section adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 7 A.A.R. 5699, effective November 26, 2001 (Supp. 01-4). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

#### R7-3-506. Withdrawals; Reporting of Non-qualified Withdrawals; Penalties

- A.** An account owner may withdraw funds from an account at any time. The designated beneficiary of an account shall not have any authority to withdraw funds from an account unless the account is structured to give the designated beneficiary such right of withdrawal upon matriculation or upon incurring qualified higher education expenses.
- B.** Withdrawals.
1. Qualified Withdrawals.  
In order to make a qualified withdrawal, the account owner or the account owner's designee must complete a certification, on a form approved by the Commission, declaring that the funds will be used for the purposes set forth in A.R.S. § 15-1871(11). The form shall include a statement advising the designated beneficiary and account owner of their obligations to report, in accordance with R7-3-506(B)(3)(c), refunds received from an eligible educational institution. In addition to the certification, a withdrawal shall be deemed qualified only if:
    - a. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made directly to the eligible educational institution; or
    - b. The financial institution is provided with a copy of an invoice from the eligible educational institution, and the distribution is made in the form of a check payable to both the designated beneficiary and the eligible educational institution; or
    - c. Within 30 days following the withdrawal, substantiation that the withdrawal was actually expended for qualified higher education expenses is submitted to the financial institution.
  2. Withdrawal Based on Death, Disability, or Scholarship.  
A penalty-free withdrawal may be made as a result of the designated beneficiary's death, disability, or scholarship, if written substantiation thereof is provided. Such written substantiation must come from a party other than the designated beneficiary or the account owner. In the case of a scholarship, the withdrawal may not exceed the amount of the scholarship.
  3. Non-Qualified or Unsubstantiated Withdrawals.  
Pursuant to A.R.S. § 15-1875(H), the Commission has authority to assess penalties for non-qualified withdrawals. If an account owner fails to certify that a withdrawal is qualified or penalty-free, as defined in R7-3-506(B)(1) and (2), above, or if a financial institution has reason to believe that a withdrawal is non-qualified, the financial institution shall withhold from such withdrawal an amount equal to 10% of that portion of that withdrawal which constitutes income under § 72 of the Code. If an account owner seeks to make a withdrawal in accordance with R7-3-506(B)(1)(c) and does not provide the required substantiation at the time of the withdrawal, the withdrawal shall be limited so that the balance remaining in the account is sufficient to pay the 10% of earnings penalty. If the financial institution is not provided with the required substantiation within 30 days, the withdrawal shall be treated as a non-qualified withdrawal, the penalty shall be assessed at that time, and the financial institution shall withdraw the penalty from the account.
    - a. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the amount of any penalty shall be remitted to the Commission with the financial institution's first monthly report following the date that the withdrawal is

- determined to be non-qualified. If the withdrawal has been declared to be non-qualified, the amount of said withholding may be remitted to the Commission with the financial institution's required monthly report.
- b. If the withdrawal has not been declared, by the party making the withdrawal, to be non-qualified, the financial institution shall report any such withholding, in writing, to the Commission with the financial institutions's first monthly report following the date that the withdrawal is determined to be non-qualified. The report shall include identification of the account owner, beneficiary, date of withdrawal, amount of withdrawal, and a brief description as to why the financial institution believes the withdrawal to be non-qualified. If the withdrawal has been declared to be non-qualified, the report may be submitted to the Commission with the financial institution's required monthly report. The financial institution shall notify the account owner and beneficiary, in writing, of any withholding.
  - c. If a qualified withdrawal is made from an account in any calendar year, within 60 days after the end of such year and within 60 days after the end of the following year, any designated beneficiary or account owner who received a partial or total refund from the eligible educational institution attended by the designated beneficiary or the eligible educational institution that the designated beneficiary had expected to attend shall provide to the financial institution a signed statement identifying the amount of any refunds received. In addition, the designated beneficiary or account owner shall provide an explanation as to what portion, if any, of the refund is allocable to a qualified withdrawal. If all or a portion of a refund is allocable to a qualified withdrawal, the designated beneficiary (or the account owner) may provide the financial institution with substantiation of qualified higher education expenses for which the refund was used or substantiation that the refund was made by reason of scholarship, or the death, or disability of the designated beneficiary. To the extent that a refund allocable to a qualified withdrawal was not used to pay qualified higher education expenses or made on account of death, disability, or scholarship of the designated beneficiary, it shall be considered a non-qualified withdrawal subject to the penalty described in R7-3-506(B)(3). The financial institution shall withdraw the penalty from the account from which the original qualified withdrawal was made, if sufficient funds are available in the account, or attempt to collect the penalty by billing the designated beneficiary or account owner for the penalty, if sufficient funds are not available in the account.
4. **Substantiation Procedures.**  
Before treating any withdrawal as qualified or penalty-free based on substantiation provided, the financial institution shall review the substantiation to confirm that substantiation is provided for the amount of a withdrawal that the account owner or designated beneficiary asserts is qualified or penalty-free, that the substantiation complies with the program rules, and, in the case of a withdrawal to pay qualified higher education expenses, that the substantiated expenditures are of a nature and in amounts that can be treated as qualified higher education expenses. The financial institution may seek additional information from the account owner, the designated beneficiary, or the eligible educational institution before approving or rejecting substantiation, and the financial institution may seek guidance from staff of the Commission. If the financial institution determines that substantiation is inadequate, it shall promptly notify the account owner and defer making any distribution with respect to any inadequately substantiated request until proper substantiation is provided or the account owner instructs the financial institution to make the requested distribution and either withhold the penalty from the distribution or from other funds in the account.
  5. **Distributions Made after December 31, 2001.**  
R7-3-506(B)(1) through (4) shall not apply to any withdrawals made after December 31, 2001, except to the extent that any provision contained therein is required for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. A financial institution shall not be required to collect a penalty on any withdrawal made after December 31, 2001. Withdrawals may be made pursuant to forms prepared or used by the financial institution and meeting the requirements of R7-3-501 through R7-3-507, if any, and any requirements for the Family College Savings Program to qualify as a qualified tuition program under § 529 of the Code. To the extent that A.R.S. § 15-1875 requires provisions that will generally enable the Commission to determine whether withdrawals are qualified or nonqualified withdrawals, a financial institution shall require an account owner to state whether the account owner expects that the withdrawal will be a qualified or nonqualified withdrawal.
- C. The account owner may dispute any withholding made by a financial institution under subsection (B) by submitting written notice, to the Commission, within 30 days from the date of such withholding. The Commission shall make a written determination regarding the dispute within 30 days of the receipt of its notice from the account owner. If the account owner disagrees with the Commission's determination, the matter shall be adjudicated in accordance with A.R.S. § 41-1092 et seq.

#### Historical Note

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 6 A.A.R. 917, effective February 10, 2000 (Supp. 00-1). Amended by exempt rulemaking at 6 A.A.R. 2486, effective June 7, 2000 (Supp. 00-2). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

#### R7-3-507. Oversight of Financial Institutions

- A. **Disclaimer of state liability.** Every document pertaining to the Family College Savings Program shall clearly indicate that "The account is not insured by the state of Arizona and neither the principal deposited nor the investment return is guaranteed by the state of Arizona." A rubber stamp may be used to imprint this language on deposit slips, account statements, payroll stubs, or other documents pertaining to the Family College Savings Program. This language may also be handwritten or typed or provided by any other method to facilitate compliance.
- B. **No Investment Direction.** A financial institution shall not permit an account owner to move funds, once deposited, that in

any way would result in investment direction under § 529 of the Code.

**C. Reporting Requirements.**

1. At least quarterly, every financial institution shall provide each account owner with a statement. The statement shall list a beginning balance, all activity during the quarter, including any interest paid or dividends earned and any penalties charged, and an ending balance. Additionally, the statement for the fourth quarter shall include the following information: an annual beginning balance, an annual total of the interest earned or dividends paid, an annual total of any penalties charged, and a year-end balance.
2. Within the time-frames established by the Code, financial institutions, at the request of the Commission, shall provide Form 1099Q to all distributees.
3. A copy of the statement described in (C)(1) and (2) shall be sent to the Commission. Additionally, each financial institution shall provide the Commission with the information required by A.R.S. § 15-1874(F).

**D. Access to books and records.** No contractor shall have access to the books and records of a financial institution or Program Manager unless the Commission or its designee first approves, with or without modification, such request for access.

**E. Non-renewal.** The Commission's failure to renew a contract with a financial institution shall not be construed as "good cause" as referred to in A.R.S. § 15-1874(I).

**F. Marketing programs.**

1. Any financial institution or group of financial institutions that wishes to engage in its own marketing program may do so provided that any proposed marketing program is first submitted to the Commission for review. If, within 30 days, the Commission does not notify the financial institution or group of financial institutions, in writing, that the proposed marketing program is rejected or requires modifications, the proposed marketing program shall be deemed approved.
2. Any financial institution or group of financial institutions that chooses to engage in its own marketing program may

petition the Commission for a credit against future marketing fees.

**Historical Note**

Adopted effective December 21, 1998, under an exemption from the Administrative Procedure Act pursuant to A.R.S. § 15-1852(C) (Supp. 98-4). Amended by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3). Amended by exempt rulemaking at 9 A.A.R. 3886, effective August 14, 2003 (Supp. 03-3).

**R7-3-508. IRS Regulations, Rulings, Notices, and Other Guidance**

**A.** If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program may adopt or undertake without jeopardizing its exemption under § 529 of the Code, (ii) such guidance is less restrictive than any rule contained in Title 7, Chapter 3, Article 5, and (iii) the more restrictive rule was not mandated by A.R.S. §§ 15-1871 to 15-1877, then the more restrictive rule shall be deemed liberalized to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 or any requirements for a program to qualify as a qualified tuition program under § 529 of the Code.

**B.** If (i) the Internal Revenue Service issues on or after February 27, 2002, any regulation, ruling, notice or other precedential guidance on procedures or activities that a qualified tuition program shall or shall not adopt or undertake to avoid jeopardizing its exemption under § 529 of the Code and (ii) the rules contained in Title 7, Chapter 3, Article 5 or the statutes contained in A.R.S. §§ 15-1871 to 15-1877 do not include such requirement or prohibition, then these rules shall be deemed amended to the maximum extent possible without violating A.R.S. §§ 15-1871 through 15-1877 to adopt such requirement or prohibition.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 3743, effective August 8, 2002 (Supp. 02-3).

## Exhibit 2

### 15-1856. Leveraging educational assistance program; criteria

A student in this state is not eligible to participate in the leveraging educational assistance program established by section 1203 of the higher education act amendments of 1998 (P.L. 105-244; 112 Stat. 1581; 20 United States Code section 1001) unless the student meets all of the following criteria:

1. The student is a resident of this state.
2. The student demonstrates financial need under the criteria established for the program.
3. The student is attending, on at least a half-time basis, an approved program at a properly accredited postsecondary educational institution in this state.

### 15-1854. Private postsecondary education student financial assistance program; fund; definition

A. A private postsecondary education student financial assistance program is established. The commission shall develop, implement and administer the program. A student who obtains an associate degree from a community college district or from a community college under the jurisdiction of an Indian tribe in this state that meets the same accreditation standards as a community college district and who registers for enrollment as a full-time student in a baccalaureate program at a private, nationally or regionally accredited four year degree granting college or university chartered in this state is eligible to submit an application to the commission for participation in the program. The commission shall establish eligibility criteria for the program, including financial need and academic merit, shall develop application forms, procedures and deadlines and shall select qualifying students each year for participation in the program. Participating students shall receive an award in an amount of up to two thousand dollars annually not to exceed two years or four thousand dollars to be used to pay all or a portion of the tuition and fees charged at the private, accredited four year college or university.

B. A private postsecondary education student financial assistance fund is established consisting of legislative appropriations. The commission shall administer the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. The commission shall make awards for payment of tuition at eligible colleges or universities to students who are selected to participate in the private postsecondary education student financial assistance program pursuant to subsection A of this section.

C. The commission shall develop a program evaluation procedure in order to determine the effectiveness of the private postsecondary education student financial assistance

program in shifting students who would have otherwise attended a public four-year college or university to private four-year degree granting colleges or universities.

D. A student who fails to receive a baccalaureate degree within a three-year period of receipt of the program award shall reimburse the private postsecondary education student financial assistance fund for all awards received pursuant to subsection A of this section. On receipt of supporting documentation from the student, for good cause shown the commission may provide for extensions of the three year period to obtain a baccalaureate degree.

E. The commission may use monies collected from students pursuant to this section for the purposes of administering the loan programs established by this article and section 15-1855.

F. For the purposes of this section, "community college district" means a community college district that is established pursuant to sections 15-1402 and 15-1403 or section 15-1402.01 and that is a political subdivision of this state.

**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Title 18, Chapter 2, Articles 7, 9, 11, and Appendix 8



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 21, 2020

**SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY**  
Title 18, Chapter 2, Articles 7, 9, 11, and Appendix 8

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### Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 2 regarding air pollution control. The report covers the following:

- Article 7- Existing Stationary Source Performance Standards
- Article 9- New Source Performance Standards
- Article 11- Federal Hazardous Air Pollutants
- Appendix 8- Procedures for Utilizing the Sulfur Balance Method Determining Sulfur Emissions

In the last 5YRR the Department proposed to amend, repeal, and expire several rules to improve overall clarity, conciseness, and effectiveness. The Department completed five separate rulemakings between June 2015 and August 2018 that addressed most of the proposed changes identified in the report.

### Proposed Action

The Department is proposing to amend several rules to improve overall clarity,

conciseness, understandability, effectiveness and consistency with other rules and statutes. Specifically, ADEQ is proposing to amend the following:

- R18-2-327 - ADEQ is proposing to amend the rule in order to meet federal requirements by completing a rulemaking by August 2020.
- Article 9 - ADEQ is proposing to amend this article every 3 years in order to incorporate changes in applicable Federal Law.
- R18-2-701 - ADEQ is proposing to amend to improve clarity, and to comply with federal requirements by January 2022.
- R18-2-705 - ADEQ is proposing to amend the rule to meet the updated CAA requirements for SIPs and the updated federal matter standards by December 2022.
- R18-2-708 - ADEQ proposes to amend to meet current federal standards by July 2022.
- R18-2-710 - ADEQ is proposing to amend the rule to improve overall clarity in response to industry concerns by July 2022.
- R18-2- 716 - ADEQ proposes to amend the rule to comply with NSPS in federal law by January 2022.
- R18-2-719 through 730 - ADEQ is proposing to amend these rules to improve overall clarity and enforcement by January 2022.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority for these rules.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules under Title 18, Chapter 2 relate to air pollution control. The Department indicates that since the last five-year submittal in 2015 they have not identified any substantive changes in impact from the rules. Their permits and compliance section did not identify any unreasonable costs.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes the rules are effective in achieving their objectives, and in doing so show no negative economic impact of any kind. They believe that the benefits of state incorporation and enforcement of federal standards substantially exceed the minimal costs. They state that State incorporation and enforcement of federal standards that will apply in any case to sources in the state is the least burdensome and costly method of securing compliance with those standards.

4. **Has the agency received any written criticisms of the rules over the last five years?**

Yes, the Department received one comment on these rules. The Department was not able to respond to the comment because the individual failed to provide his contact information.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Department states the rules under review are overall clear, concise, understandable, and effective with the exception of the following:

- R18-2-701
- Appendix 8
- R18-2-705
- R18-2-708
- R18-2-710
- R18-2-716
- R18-2-719
- R18-2-721
- R18-2-722
- R18-2-723
- R18-2-725
- R18-2-727
- R18-2-730

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are overall enforced as written with the exception of the following:

- R18-2-719
- R18-2-720
- R18-2-721
- R18-2-725

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

The Department indicates the rules are not more stringent than the corresponding federal

laws; 40 CFR 60.1 through 60.9999, Clean Air Act, 40 CFR 63 (NESHAPS).

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require issuance of a regulatory permit.

**9. Conclusion**

ADEQ indicates the rules are mostly clear, concise, understandable, effective, and enforced. However, ADEQ indicates some of the rules could be improved as outlined in the report and mentioned above. The Department is proposing to amend several of the rules and is proposing several timeframes to complete rulemakings, some as soon as August 2020, and the latest being December 2022.

While council staff recommends approval of this report, council staff encourages the Council to further discuss the proposed timeframes.



Douglas A. Ducey  
Governor

ARIZONA DEPARTMENT  
OF  
ENVIRONMENTAL QUALITY



Misael Cabrera  
Director

May 28, 2020

Nicole Sornsin, Chair  
Governor's Regulatory Review Council  
100 N. 15<sup>th</sup> Avenue, #305  
Phoenix, AZ 85007

Re: Submittal of Five Year Rule Review Report for  
A.A.C. Title 18, Chapter 2, Articles 7, 9, 11 and Appendix 8.

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 2, Articles 7, 9, 11 and Appendix 8.

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Ray Caccavale in the Air Quality Division at 602-771-8730, or [caccavale.raymond@azdeq.gov](mailto:caccavale.raymond@azdeq.gov), if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Misael Cabrera".

Misael Cabrera, P.E.  
Director

Enclosure

**Main Office**

1110 W. Washington Street • Phoenix, AZ 85007  
(602) 771-2300

**Southern Regional Office**

400 W. Congress Street • Suite 433 • Tucson, AZ 85701  
(520) 628-6733

[www.azdeq.gov](http://www.azdeq.gov)

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**Arizona Department of Environmental Quality**

**Five-Year-Review Report**

**Title 18. Environmental Quality**

**Chapter 2. Department of Environmental Quality - Air Pollution Control**

**Article 7. Existing Stationary Source Performance Standards**

**Article 9. New Source Performance Standards**

**Article 11. Federal Hazardous Air Pollutants**

**Appendix 8. Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions**

**May 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 49-104

Specific Statutory Authority: A.R.S. §§ 49-404 and 49-425.

**2. The objective of each rule:**

<b>Rule</b>	<b>Objective</b>
<b>ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS</b>	
R18-2-701	To provide definitions for specific terms used in Article 7 to ensure Article 7 rules are clear.
R18-2-702	To establish the general applicability of Article 7 and the general 20 percent opacity standards for sources subject to Article 7. Opacity serves a surrogate limit for particulate matter emissions. The rule is necessary to comply with Clean Air Act (C.A.A.) § 110(a)(2)(A), which requires that states have programs to regulate all stationary sources in order to protect the National Ambient Air Quality Standards (NAAQS).
R18-2-703	The rule establishes emissions and performance standards for existing steam generators and general fuel burning equipment to prevent excess emissions of particulate matter, sulfur dioxide, and nitrogen oxides. The rule is necessary to comply with C.A.A. § 110(a)(2)(A), which requires that states have programs to regulate all stationary sources in order to protect the NAAQS.
R18-2-704	The rule provides emission limitations related to opacity and particulates, and other requirements for incinerators not subject to New Source Performance Standards (NSPS).
R18-2-705	The rule provides emission limitations and other requirements to prevent particulate matter and sulfur oxides from emission units in Portland cement plants not subject to NSPS.
R18-2-706	The rule provides emission limitations and other requirements to prevent particulate matter, nitric acid, and nitrogen oxide air pollution from existing nitric acid plants not subject to NSPS.

R18-2-707	The rule provides emission limitations and other requirements to prevent sulfur dioxide, sulfuric acid, and particulate matter pollution from existing sulfuric acid plants not subject to NSPS.
R18-2-708	The rule provides emission limitations and other requirements to prevent particulate matter pollution from existing asphalt concrete plants not subject to NSPS.
R18-2-710	This rule provides emission limitations and other requirements to prevent air pollution such as hydrocarbon vapor from existing storage vessels for petroleum liquids not subject to NSPS.
R18-2-714	This rule provides emission limitations and other requirements to prevent particulate matter and other air pollution from existing sewage treatment plants not subject to NSPS.
R18-2-715	The rule provides emission limitations and other requirements for primary copper smelters designed to result in attainment of the sulfur dioxide NAAQS.
R18-2-715.01	Establish compliance and monitoring requirements for the emission standards for copper smelters contained in the previous section.
R18-2-715.02	This rule established procedures for estimating and evaluating fugitive emissions from primary copper smelters.
R18-2-716	This rule provides emission limitations and other requirements to prevent air pollution from existing coal preparation plants not subject to NSPS.
R18-2-719	This rule provides emission limitations and other requirements to prevent air pollution from existing stationary rotating machinery not subject to NSPS.
R18-2-720	This rule provides emission limitations and other requirements to prevent air pollution from existing lime manufacturing plants not subject to NSPS.
R18-2-721	This rule provides emission limitations and other requirements to prevent air pollution from existing nonferrous metals industry sources not subject to NSPS.
R18-2-722	Provide emission limitations and other requirements for existing gravel and crushed stone processing plants not subject to NSPS.
R18-2-723	This rule provides emission limitations and other requirements to prevent air pollution from existing concrete batch plants not subject to NSPS.
R18-2-724	This rule provides emission limitations and other requirements to prevent air pollution, including particulate matter and sulfur dioxide, from existing fossil fuel-fired industrial and commercial equipment not subject to NSPS.
R18-2-725	This rule provide emission limitations and other requirements for dry cleaning plants not subject to NSPS.
R18-2-726	This rule provides emission limitations and other requirements to prevent air pollution, including particulate matter, from sandblasting operations.
R18-2-727	The rule requires spray paint operations to minimize solvent emissions. Solvents generally consist of volatile organic compounds (VOC), which are precursors of ozone. Thus, minimizing solvent emissions has the effect of preventing or mitigating violations of the ozone NAAQS.
R18-2-728	This rule provides emission limitations and other requirements to prevent air pollution, including particulate matter, hydrogen sulfide, and sulfur oxides, from existing ammonium sulfide manufacturing plants not subject to NSPS.

R18-2-729	This rule provides emission limitations and other requirements to prevent air pollution, including particulate matter and other gas-borne material, from existing cotton gins not subject to NSPS.
R18-2-730	This rule provides emission limitations and other requirements to prevent air pollution from unclassified sources not subject to NSPS.
R18-2-731	This rule provides emission limitations and other requirements for municipal solid waste (MSW) landfills for which construction began before May 30, 1991. The rule is necessary to comply with CAA §111(d) which requires that "designated" pollutants, controlled under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in a related EPA regulation.
R18-2-734	This rule imposed limits on mercury emissions from Arizona power plants in addition to the cap-and-trade program imposed by 40 CFR 60, Subpart HHHH, in order to assure that coal-fired EGUs in Arizona would achieve actual reductions in mercury emissions, rather than simply purchasing sufficient allowances to cover their emissions.  Subpart HHHH was vacated by the D.C. Circuit in <i>New Jersey v. EPA</i> , 517 F.3d 574, 578 (D.C. Cir. 2008). In response, EPA on December 11, 2011 adopted the Mercury and Air Toxics Standards (MATS), which imposed emission limits comparable to those imposed by R18-2-734. MATS has been challenged in court, and the litigation is still ongoing. R18-2-734 was recently amended to provide a backstop state mercury control program that will go into effect if MATS is ultimately vacated or repealed. <i>See</i> 21 A.A.R. 711 (May 22, 2015).
<b>ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS</b>	
R18-2-901	Incorporates NSPS by reference in order to allow Arizona to receive delegation of EPA's authority to enforce the standards under § 111(c) of the Clean Air Act.
R18-2-902	This rule makes a few discrete changes to the rules incorporated by reference in R18-2-901 to allow the delegation of enforcement authority to ADEQ.
R18-2-903	This rule modifies the limit on sulfur dioxide emissions from fossil-fuel-fired steam generating units (EGU) subject to 40 CFR Part 60, Subpart D. Subpart D applies to units that commenced construction after August 17, 1971 but before September 18, 1978. It imposes limits of 520 nanograms per joule heat input on units burning solid fuel and 340 nanograms per joule on units burning liquid fuel. R18-2-903(1) imposes the 340 nanograms per joule limit on both solid- and liquid-fuel burning units. The objective of this alteration is to ensure maintenance of the sulfur dioxide NAAQS.
R18-2-904	The purpose of the rule is to comply with CAA § 110(a)(2)(C), which requires that states have programs to regulate all stationary sources in order to protect the NAAQS. The NSPS at 40 CFR Part 60, Subpart E imposes a 0.08 grain per dry standard cubic foot (gr/dscf) limit on particulate matter emissions from incinerators that were constructed or modified after August 17, 1971 and have a charging rate greater than 45 metric tons per day. R18-2-904 extends the application of this limit to all incinerators constructed or modified after May 14, 1979. Incinerators that are not subject to the NSPS limit must comply with a limit of 0.1 or 0.2 gr/dscf under R18-2-704, depending on the type of incinerator.

R18-2-905	The rule is designed to ensure that new petroleum liquid storage tanks below the NSPS 40,000 gallon threshold and other equipment involved in handling petroleum liquids are designed to minimize the release of VOCs. The requirements are essentially the same as the requirements for existing tanks in R18-2-704(B) to (D).
<b>ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS</b>	
R18-2-1101	This rule incorporates National Emissions Standards for Hazardous Air Pollutants (NESHAPS) by reference in order to allow Arizona to receive delegation of EPA's authority to enforce the standards under § 112(l) of the Clean Air Act and to satisfy A.R.S. § 49-426.03.
R18-2-1102	This rule clarifies certain provisions in R18-2-1101 so the incorporated rules can be administered effectively by the state.
<b>APPENDIX 8. PROCEDURES FOR UTILIZING THE SULFUR BALANCE METHOD FOR DETERMINING SULFUR EMISSIONS</b>	
Appendix 8	Appendix 8 establishes a methodology for calculating fugitive emissions of sulfur dioxide from primary copper smelters as required by R18-2-715.01(O), (T), and (U).

3. **Are the rules effective in achieving their objectives?**

Yes  No

The rules are effective other than as noted below.

Rule	Explanation
R18-2-701	ADEQ would expand the definition of "Calcine" to include plants in addition to Lime plants, delete or add a specific time frame to the definition of "Process Weight," and clarify the definition of "Process Weight Rate. This would help bring the rule language further into compliance with CAA 110(a)(2).
Appendix 8	This rule requires more accurate language regarding determining fugitive emissions for sulfur dioxide from primary copper smelters to best comply with updated federal standards in 40 CFR 60.

4. **Are the rules consistent with other rules and statutes?**

Yes  No

The rules are consistent with other rules and statutes other than as noted below.

Rule	Explanation
R18-2-705	This rule is inconsistent with updated federal PM SIP standards.. Further changes to Article 6 and related PM rules must also be made for improved consistency.
R18-2-708	This rule was amended in 2009, and is no longer compliant with federal standards and is therefore inconsistent with any SIP requirements and must be updated.
R18-2-716	This rule is inconsistent with SIP and federal standards because it was last updated in 2009 at 15 A.A.R. 281 and must be amended to be brought back into compliance, furthering overall rule compliance with 40 CFR 60.
R18-2-722	This rule was incorporated into a PM SIP submitted to EPA by ADEQ. That rule language no longer complies with CAA 110(a)(2) and must be amended to ensure that all facilities this rule impacts are covered by the language within it, and then the SIP must be re-submitted to EPA with the new rule language. This amendment must be made after the Article 6 revisions are completed.
R18-2-723	This rule makes reference to the provisions of Article 6, which is currently being amended and updated with appropriate PM standards and limitations. Once Article 6 is amended, this rule will also need amending.

5. **Are the rules enforced as written?**

Yes  No

The rules are enforced as written other than as noted below.

Rule	Explanation
R18-2-719	This rule is difficult to enforce as it is currently written because the language is inconsistent with current NESHAPS sulfur limitations.

R18-2-720	This rule must be amended to improve compliance parameters.
R18-2-721	This rule must have its language amended to be more consistent with Federal PM rules, and improve the language to more clearly lay out PM emission standards.
R18-2-725	ADEQ intends to improve the language in this rule regarding recordkeeping requirements. Improving enforceability.

6. **Are the rules clear, concise, and understandable?**

Yes  No

The rules are clear, concise and understandable other than as noted below.

<b>Rule</b>	<b>Explanation</b>
R18-2-710	Cal Portland Cement, a stakeholder involved with air quality policy in AZ, expressed to ADEQ concerns with this rule in the previous 5 Year Rule Report. The rule lacks clarity, and must be improved to be effective to industry users.
R18-2-719	This rule will be amended to improve clarity. Its current language in the rule is inconsistent with NESHAPS language.
R18-2-721	This rule must have its language amended to be more consistent with Federal PM rules, and improve the language to more clearly lay out PM emission standards.
R18-2-725	To improve clarity, ADEQ proposes to amend the rule by adding monitoring and recordkeeping requirements to the language of the rule.
R18-2-727	ADEQ intends to amend this rule to address EPA concerns of clarity associated with this rule, brought up prior to the submittal of the previous Rule Review Report.

R18-2-730	This rule lacks language that conforms to current drafting conventions, as well as certain NAAQS provisions.
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7. **Has the agency received written criticisms of the rules within the last five years?**    Yes  No

On March 4<sup>th</sup>, 2020 ADEQ received a single comment regarding the dangers of Ozone on the Phoenix area, and how it relates to the rules contained in this Rule Review Report. The comment left is quoted below:

*“Not concise enough. However, as a person with minor respiratory issues, I'm finding the air around Phoenix more and more distressing. I also find that the reports I get on my phone regarding ozone are often not what my lungs and eyes are telling me. Ozone is my main affliction. I hope you can find a way to improve this. Good luck and prayers on that front. Our bus system (which is wanting) and our light rail system could both use vast extensions and more fingers into the community. We CAN do this. Now is the time!”*

ADEQ was unable to respond to the comment because the individual failed to leave their name or contact information. However, ADEQ plans to address the items it has identified in this report in the rulemakings noted in the Proposed Course of Action section of this report, which should help address the issues raised by this citizen.

8. **Economic, small business, and consumer impact comparison:**

An economic and small business plan was prepared for several rule revisions identified in the previous submittal of a Rule Review Report in 2015 and are listed below along with ADEQs update on the predicted impacts associated with these rules over the next 5 years.

- R18-2-715: The rule was amended by final rulemaking at 13 A.A.R. 2157 (June 22, 2007), to delete the reference to the smelter in San Manuel. Economic impact was addressed in that rulemaking. The smelter located at San Manuel surrendered its permit and is no longer operational. As far as ADEQ can determine, there have been no other changes in impact since that amendment, and ADEQ anticipates no further change in severity to that impact.
- R18-2-729: Economic impact was addressed in that rulemaking. Owners and operators of cotton gins incur costs in the course of conforming to standards of performance, through monitoring and limitations on operations and emissions.

ADEQ incurs the costs of implementing and enforcing the rule. Health benefits accrue to the public, as well as any costs passed on to them by the owners and operators through operation of the market. There has been no identified change in impact since the last amendment to this rule, and ADEQ anticipates no changes moving forward.

- R18-2-734: This rule was amended in 2015 and an economic and small business impact report was filed for this submittal. ADEQ determined that none of the revisions to this rule would have any significant financial impact on the State, ADEQ, or owners of coal fired electric steam generating units. No new report has been filed since that revision was submitted, and no changes has been made to ADEQs anticipated impact of such rule.
- R18-2-901 through 905: According to the previously submitted small business, and consumer impact statement for ADEQ's last rulemaking to update Article 9, the incorporation of federal regulations imposes no additional costs on the regulated community and only small permitting and enforcement costs on ADEQ. ADEQ retains this opinion and affirms that no new changes have been made to the impact of these rules.
- R18-2-1101: According to the previously submitted small business, and consumer impact statement for ADEQ's last rulemaking to update Article 9, the incorporation of federal regulations imposes no additional costs on the regulated community and only small permitting and enforcement costs on ADEQ. ADEQ retains this opinion and affirms that no new changes have been made to the impact of these rules.
- Appendix 8: The appendix has not been amended since its inception at final rulemaking in 11 A.A.R. 2216 (June 10, 2005). The economic impact was addressed in that rulemaking and ADEQ believes that assessment remains valid.

Additionally, a survey of the AQD Permits and Compliance Section did not identify any unreasonable costs associated with any rules discussed in this report. The rules are effective in achieving their objectives, and in doing so show no negative economic impact of any kind. Minor costs are implied on some facility owners and ADEQ but are affiliated with routine Permitting and Compliance fees, and are not detrimental to either party.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

The previous Rule Review Report submitted in 2015 by ADEQ for Articles 7, 9, and 11, and Appendix 8 identified several rules to be amended and repealed before the submittal of this 2020 Rule Review Report. The following is a list of the amendments, repeals, and expirations made as a result of the 2015 Rule Review Report submittal.

- a. R18-2-701 Definitions: Amended June 2015. Per the 2015 Rule Review Report, ADEQ proposed to amend this rule in order to clarify certain terms. Per EPA's limited approval comments in 68 FR 14,151 (March 24, 2003), ADEQ would expand the definition of "Calcine" to include plants in addition to Lime plants, delete or add a specific time frame to the definition of "Process Weight," and clarify the definition of "Process Weight Rate." This rule was amended as a part of the AZ Mercury rule revisions made in June of 2015, and was revised prior to the submittal of the previous Rule Review Report but is included in this summary for clarity purposes. *See* 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).
- b. R18-2-709, 711, 712, 713: Expired September 2015. In the previous Rule Review Report, ADEQ elected to allow them to expire under A.R.S. § 41-1056(J). These rules are no longer applicable to any existing sources and therefore do not currently serve any purpose. *See* 21 A.A.R. 15, effective Sept. 30, 2015 (Supp. 15-4).
- c. R18-2-715, 715.01, and 715.02: Amended May 2017. ADEQ amended these rules in 2017 in an effort to improve the control of lead in the Hayden region of Arizona. These revisions were submitted as a part of a State Implementation Plan (SIP) revision to the Hayden Pb SIP. *See* 23 A.A.R. 767, effective May 7, 2017 (Supp. 17-1).

- d. R18-2-717: Expired September 2015. In the previous Rule Review Report ADEQ elected to allow this rule to expire under A.R.S. § 41-1056(J). These rules are no longer applicable to any existing sources and therefore do not currently serve any purpose. *See* 21 A.A.R. 15, effective Sept. 30, 2015 (Supp. 15-4).
- e. R18-2-731: Amended August 2018. This rule was amended as a part of the MSW Landfill rule revision conducted by ADEQ in 2018. This rule revision incorporated by reference new federal standards applicable to municipal solid waste landfills in Arizona. *See* 24 A.A.R. 1864, effective August 10, 2018 (Supp. 18-2).
- f. R18-2-732: Expired September 2015. *See* 21 A.A.R. 15, effective Sept. 30, 2015 (Supp. 15-4).
- g. R18-2-733, and 733.01: Repealed June 2015. *See* 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).
- h. R18-2-734: Amended, June 2015. ADEQ amended R18-2-734 to incorporate the new NESHAP for mercury, as well as EPA's monitoring and testing requirements. *See* 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).
- i. R18-2-901: Amended August 2018. ADEQ amended this rule in an effort to incorporate by reference updated New Source Performance Standards for MSW Landfills in Arizona. *See* 24 A.A.R. 1864, effective Aug. 10, 2018 (Supp. 18-3).
- j. R18-2-1101: Amended May 2018. This rule was amended as an incorporation by reference to incorporate new federal standards. *See* 23 A.A.R. 1564, effective May 2, 2018 (Supp. 18-2).

Commitments were also made to revise article 7, rules 701, 716, 719, 720, 723, and 730. These revisions were not made due to prioritizations changing within ADEQ. For further information concerning the commitments to make these changes in the future see #14 below.

**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:**

As noted in response to item 8, the benefits of local enforcement of Federal and State standards substantially exceed the minimal costs. State incorporation and enforcement of federal standards that will in any case apply to sources in the state is the least burdensome and costly method of securing compliance with those standards.

12. **Are the rules more stringent than corresponding federal laws?**

Yes \_\_\_ No X

- Article 7: These rules are not more stringent than a corresponding federal law. All standards listed in this article demonstrate compliance with 40 CFR § 60.1 through 60.9999. ADEQ has reviewed all of the rules in Article 7 and concluded that generally, unless otherwise noted, all of the rules in Article 7 are necessary to comply with the Clean Air Act § 110(a)(2)(A), which requires states to have programs that regulate all stationary sources in order to protect the NAAQS. None of the rules is more stringent than corresponding federal law.
  
- Article 9: Rules R18-2-901 through 905 incorporate by reference federal standards, and are therefore not more stringent than the corresponding federal law.
  - R18-2-903. Standards of Performance for Fossil fuel Fired Steam Generators: This rule is not more stringent the corresponding federal law. Although the sulfur dioxide limit imposed by the rule is more stringent than the NSPS, it is less stringent than the sulfur dioxide limits imposed on the same EGUs under the best available retrofit (BART) program of § 169A(b)(2)(A) of the Clean Air Act.
  - R18-2-904. Standards of Performance for Incinerators: The NSPS at 40 CFR Part 60, Subpart E imposes a 0.08 grain per dry standard cubic foot (gr/dscf) limit on particulate matter emissions from incinerators that were constructed or modified after August 17, 1971 and have a charging rate greater than 45 metric tons per day. R18-2-904 extends the application of this limit to all incinerators constructed or modified after May 14, 1979. Incinerators that are not subject to the NSPS limit must comply with a limit of 0.1 or 0.2 gr/dscf under R18-2-704, depending on the type of incinerator.

The purpose of the rule is to comply with CAA § 110(a)(2)(C), which requires that states have programs to regulate all stationary sources in order to protect the NAAQS.

- Article 11: These rules incorporate the corresponding federal law at 40 CFR 63 (NESHAPS) by reference with only minor changes needed to allow state administration of the standards.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

- Article 7: Many of the rules in Article 7 have been amended before and after July 29, 2010. However, none specifically require the issuance of a regulatory permit, license, or agency authorization.
- Article 9: R18-2-901 was amended after July 29<sup>th</sup>, 2010 and does not list the requirement or issuance of a permit or license within its text. R18-2-902, R18-2-903, R18-2-904, and R18-2-905 were last amended prior to July 29, 2010. These rules do not require the issuance of a regulatory permit, license or agency authorization.
- Article 11: None of the rules in Article 11 require the issuance of a regulatory permit.
- Appendix 8: Appendix 8 does not require the issuance of a regulatory permit.

14. **Proposed course of action**

ADEQ continues to review rules consistent with Executive Order 2020-02. ADEQ anticipates several rulemakings that will affect the articles and appendices covered by this report. A brief summary and explanation of each anticipated rulemaking and the estimated dates that ADEQ proposes to submit the rulemakings to GRRC follows:

- a. Article 3 Revisions. ADEQ proposes to amend R18-2-327 in Article 3 to reduce the reporting burden for Class II sources. At the same time, ADEQ is amending the rule to require annual ozone precursor emission reporting questionnaires for all sources within ozone nonattainment areas in order to meet federal requirements. This rule amendment was discussed in the 2019 Rule Review Report submitted to and approved by GRRC that same year. ADEQ anticipated this rulemaking to be complete by January 2020. ADEQ continues this is an active project. The sources of VOCs in the Yuma area may be impacted by any future changes to the NSPS, specifically R18-2-725 NSPS for Dry Cleaning Facilities. ADEQ anticipates submitting this rulemaking to GRRC by August 2020. This rulemaking is required by CAA § 182(a)(3)(B).
- b. New Source Performance Standards (NSPS) – ADEQ proposes amendments to Title 18, Chapter 2, Article 9 every 3 years, if necessary, to the New Source Performance Standards to incorporate changes in

applicable Federal law. ADEQ anticipates submitting any necessary revisions and incorporation by reference changes to GRRC no later than December of 2021.

- c. R18-2-701 Amendment: Further changes to this rule are going to be made by ADEQ. ADEQ proposes to amend these rules to clarify certain terms. Per EPA's limited approval comments in 68 FR 14,151 (March 24, 2003), ADEQ would expand the definition of "Calcine" to include plants in addition to Lime plants, delete or add a specific time frame to the definition of "Process Weight," and clarify the definition of "Process Weight Rate." By making these amendments, the rule language will further assist in making Arizona standards comply with federal requirements, and is required under the CAA § 110 (a)(2). ADEQ will submit this rule revision as a part of a revision package as noted in the preceding sections, ADEQ anticipates submitting this package to GRRC by January 2022.
- d. R18-2-705 Amendment: This rule no longer meets CAA requirements for approval into the SIP. Therefore this rule language to comply with CAA § 110 (a)(2), must be amended to meet the updated CAA requirements for SIPs and the updated federal particulate matter standards. Because Title 18, Chapter 2, Article 6 of the A.A.C. is currently being revised by ADEQ and all PM<sub>10</sub> SIP production has been halted until the Article 6 revision is completed. Therefore, ADEQ anticipates, if a rulemaking moratorium exemption is granted, submitting this rulemaking to GRRC in December 2022.
- e. R18-2-708 Amendment: This rule was last amended in 2009, and must be updated to comply with current federal standards. Contingent upon an exemption from the rulemaking moratorium, ADEQ anticipates submitting a new rule revision in July 2022.
- f. R18-2-710 Amendment: ADEQ proposes to update and amend this rule to improve its clarity in response to reasonable industry concerns verbally expressed by Cal Portland prior to the submittal of the 2015 Rule Review Report. Making these amendments will not only make the rule simpler to use by the consumers but assure Arizona regulations comply with the updated federal standards in 40 CFR Part 60. The rule was last updated in 1993. ADEQ intends on submitting a revision to this rule in July 2022.

- g. R18-2-716 Amendment: ADEQ has withdrawn this rule from a previous SIP submission. The withdrawn rule will need to be updated and replaced with an EPA approvable version. This rule was last amended and needs to be updated to comply with federal NSPS in 40 CFR Part 60. ADEQ will bundle most Article 7 rules that require amendment into a single rulemaking. ADEQ proposes to submit an amended rule to GRRC by January 2022.
- h. R18-2-719 Amend: ADEQ proposes to amend this rule to improve clarity and enforceability, including possibly updating sulfur limits to match source applicable NESHAP rules, which require use of ultra-low sulfur fuel. ADEQ proposed to amend this rule in the previous 5 Year Review Report, but has not completed the amendments. ADEQ is expecting to bundle most Article 7 rules that require amendment into a single rulemaking. ADEQ proposes to submit an amended rule to GRRC by January 2022.
- i. R18-2-720 Amend: ADEQ proposed to amend this rule in the 2015 5 Year Review Report, but the amendment was never completed. ADEQ proposes to amend this rule by improving certain compliance parameters to comply with updated federal standards, such as the process weight equations. ADEQ will bundle most Article 7 rules that require amendment into a single rulemaking. ADEQ proposes to submit an amended rule to GRRC by January 2022.
- j. R18-2-721 Amend: ADEQ submitted that this rule would be amended by 2020 in the last Rule Review Report, but this amendment was delayed. ADEQ intends to improve the particulate matter standards and emission requirements for these facilities, and plans on submitting this amendment, separate from the article 7 bundle as previously mentioned in other rules, as a part of additional particulate matter changes in January 2022.
- k. R18-2-722 Amend: ADEQ withdrew this rule from a previous SIP submission due to it no longer complying with 40 CFR 60 the federal NSPS. There are still facilities to which this rule applies. Therefore, the withdrawn rule will need to be replaced with an EPA approvable version, including

possible updates to particulate matter standards, which will be amended in the previously mentioned Article 6 revision. ADEQ intends to have this submitted, as well as additional particulate matter provisions in January 2022.

- l. R180-2-723 Amend: This rule references the provisions of Article 6, which is going to be amended by ADEQ in 2021. Therefore, depending on the content of that revision, this article may need to be revised as well. This revision, if necessary will be submitted as a part of a bundle in January 2022.
  
- m. R18-2-725 Amend: To improve enforceability and clarity, ADEQ proposes to amend this rule by adding monitoring and recordkeeping requirements. Revisions to rules, such as R18-2-725, that impose controls on ozone precursors may be addressed in a separate rulemaking designed to meet the SIP submission requirements for the new ozone NAAQS, publish in October 2015. The date any such rulemaking is submitted to GRRC will depend on the ozone SIP in which it must be included and the SIP submission schedule. ADEQ intends to have this amendment submitted by January 2022.
  
- n. R18-2-727 Amend: ADEQ intends to develop and propose amendments to R18-2-727 to address EPA concerns voiced prior to the submittal of the previous 5 Year Rule Review Report was submitted. The amendments to this rule were proposed in the 2015 Rule Review Report, but no action has been taken because the date any such rulemaking is submitted to GRRC will depend on the particular ozone SIP in which it must be included and the SIP submission schedule. It will be submitted to GRRC by January 2023.
  
- o. R18-2-730 Amend: ADEQ proposes to amend this rule to reduce burden, improve clarity and conciseness, and ensure that the rule protects the NAAQS as effectively as possible. In the course of amending this rule, ADEQ would convert the language to conform to current drafting conventions. ADEQ will bundle most Article 7 rules that require amendment into a single rulemaking. ADEQ proposes to submit an amended rule to GRRC by January 2022.

## **ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**

- a. R18-2-901 Amend: ADEQ plans to update the NSPS on a three-year schedule and therefore anticipates submitting a rule to adopt changes made, and new sections added to, 40 CFR Part 60, in May of 2021.

## **ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS**

None

## **APPENDIX 8. PROCEDURES FOR UTILIZING THE SULFUR BALANCE METHOD FOR DETERMINING SULFUR EMISSIONS**

- a. Appendix 8: In the previously submitted Rule Review Report submitted in 2015, and as a part of the rulemaking to replace R18-2-715 to -715.02 described in the reports on those rules, ADEQ proposed adopting new, more accurate methods for determining fugitive emissions of sulfur dioxide from primary copper smelters to replace Appendix 8. Appendix 8 has yet to be amended in such a way, and ADEQ proposes to make such amendments by December 2021 as a part of the Article 7 bundled revision submittal.

# Arizona Administrative CODE

18 A.A.C. 2 Supp. 19-4

www.azsos.gov

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of October 1, 2019 through December 31, 2019

## Title 18



**ARD** Office of the Secretary of State  
**ADMINISTRATIVE RULES DIVISION**

## TITLE 18. ENVIRONMENTAL QUALITY

### CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

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#### Questions about these rules? Contact:

Name: Zachary Dorn  
Address: Department of Environmental Quality  
Air Quality Division, AQIP Section  
1110 W. Washington St.  
Phoenix, AZ 85007  
Telephone: (602) 771-4585 (This number may be reached in-state by dialing 1-800-234-5677 and entering the seven digit number.)  
Fax: (602) 771-2299  
E-mail: [dorn.zachary@azdeq.gov](mailto:dorn.zachary@azdeq.gov)

#### The release of this Chapter in Supp. 19-4 replaces Supp. 19-2, 1-225 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

## PREFACE

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

Scott Cancelosi, Director  
ADMINISTRATIVE RULES DIVISION

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### RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘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.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. 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 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

### AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

### 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.

### ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, [www.azleg.gov](http://www.azleg.gov). An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

### SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under 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 *Register* online at [www.azsos.gov/rules](http://www.azsos.gov/rules), click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections 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

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



Administrative Rules Division
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TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

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Article 2, consisting of Sections R18-2-201 through R18-2-220, repealed effective August 8, 1991 (Supp. 91-3).

Article 2 consisting of Sections R9-3-201, R9-3-202, R9-3-204 through R9-3-207, and R9-3-215 through R9-3-219 renumbered as Article 2, Sections R18-2-201, R18-2-202, R18-2-204 through R18-2-207, and R18-2-215 through R18-2-219 (Supp. 87-3).

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Article 3 consisting of Sections R9-3-301 through R9-3-319 and R9-3-321 through R9-3-323 renumbered as Article 3, Sections

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*Article 8, consisting of Sections R18-2-801 through R18-2-805, renumbered to Article 9, Sections R18-2-901 through R18-2-905 (Supp. 93-4).*

*Article 8 consisting of Sections R18-2-801 through R18-2-805 adopted effective February 26, 1988.*

*Former Article 8 consisting of Sections R9-3-801 through R9-3-829, R9-3-831, R9-3-832, R9-3-835 through R9-3-838, R9-3-840 through R9-3-848, and R9-3-857 through R9-3-859 repealed effective February 26, 1988.*

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*Article 9 consisting of Sections R18-2-901 and R18-2-902 adopted effective February 26, 1988.*

*Former Article 9 consisting of Sections R9-3-901, R9-3-903 through R9-3-906, R9-3-910, R9-3-913, and R9-3-922 repealed effective February 26, 1988.*

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*Article 11 consisting of Sections R18-2-1101 and R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3).*

*Article 11 consisting of Sections R9-3-1101, R9-3-1102, and Appendices 1 through 11 renumbered as Article 11, Sections R18-2-1101, R18-2-1102, and Appendices 1 through 11 (Supp. 87-3).*

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*Article 13, consisting of Sections R18-2-1301 through R18-2-1307, rules expired under A.R.S. § 41-1056(J), effective April 30, 2013 (Supp. 13-3).*

*Article 13, consisting of Sections R18-2-1301 through R18-2-1307, made by final rulemaking at 9 A.A.R. 1295, effective April 2, 2003 (Supp. 03-2).*

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Article 18, consisting of Sections R18-2-1801 through R18-2-1812 and Appendix 13, made by final rulemaking at 14 A.A.R. 2404, effective July 8, 2008 (Supp. 08-2).

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## CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

## ARTICLE 1. GENERAL

**R18-2-101. Definitions**

The following definitions apply to this Chapter. Where the same term is defined in this Section and in the definitions Section for an Article of this Chapter, the Article-specific definition shall apply.

1. "Act" means the Clean Air Act of 1963 (P.L. 88-206; 42 U.S.C. 7401 through 7671q) as amended through December 31, 2011 (and no future editions).
2. "Actual emissions" means the actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in subsections (2)(a) through (e), except that this definition shall not apply for calculating whether a significant emissions increase as defined in R18-2-401 has occurred, or for establishing a plantwide applicability limitation as defined in R18-2-401. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
  - a. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period that precedes the particular date and that is representative of normal source operation. The Director may allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.
  - b. The Director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.
  - c. For any emissions unit that is or will be located at a source with a Class I permit and has not begun normal operations on the particular date, actual emissions shall equal the unit's potential to emit on that date.
  - d. For any emissions unit that is or will be located at a source with a Class II permit and has not begun normal operations on the particular date, actual emissions shall be based on applicable control equipment requirements and projected conditions of operation.
  - e. This definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL. Instead, the definitions of projected actual emissions and baseline actual emissions in R18-2-401 shall apply for those purposes.
3. "Administrator" means the Administrator of the United States Environmental Protection Agency.
4. "Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.
5. "Affected source" means a source that includes one or more units which are subject to emission reduction requirements or limitations under Title IV of the Act.
6. "Affected state" means any state whose air quality may be affected by a source applying for a permit, permit revision, or permit renewal and that is contiguous to Arizona or that is within 50 miles of the permitted source.
7. "Afterburner" means an incinerator installed in the secondary combustion chamber or stack for the purpose of incinerating smoke, fumes, gases, unburned carbon, and other combustible material not consumed during primary combustion.
8. "Air contaminants" means smoke, vapors, charred paper, dust, soot, grime, carbon, fumes, gases, sulfuric acid mist aerosols, aerosol droplets, odors, particulate matter, wind-borne matter, radioactive materials, or noxious chemicals, or any other material in the outdoor atmosphere.
9. "Air curtain destructor" means an incineration device designed and used to secure, by means of a fan-generated air curtain, controlled combustion of only wood waste and slash materials in an earthen trench or refractory-lined pit or bin.
10. "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants or combinations thereof in sufficient quantities, which either alone or in connection with other substances by reason of their concentration and duration are or tend to be injurious to human, plant or animal life, or cause damage to property, or unreasonably interfere with the comfortable enjoyment of life or property of a substantial part of a community, or obscure visibility, or which in any way degrade the quality of the ambient air below the standards established by the director. A.R.S. § 49-421(2).
11. "Air pollution control equipment" means equipment used to eliminate, reduce or control the emission of air pollutants into the ambient air.
12. "Air quality control region" (AQCR) means an area so designated by the Administrator pursuant to Section 107 of the Act and includes the following regions in Arizona:
  - a. Maricopa Intrastate Air Quality Control Region which is comprised of the County of Maricopa.
  - b. Pima Intrastate Air Quality Control Region which is comprised of the County of Pima.
  - c. Northern Arizona Intrastate Air Quality Control Region which encompasses the counties of Apache, Coconino, Navajo, and Yavapai.
  - d. Mohave-Yuma Intrastate Air Quality Control Region which encompasses the counties of La Paz, Mohave, and Yuma.
  - e. Central Arizona Intrastate Air Quality Control Region which encompasses the counties of Gila and Pinal.
  - f. Southeast Arizona Intrastate Air Quality Control Region which encompasses the counties of Cochise, Graham, Greenlee, and Santa Cruz.
13. "Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:
  - a. The applicable standards as set forth in 40 CFR 60, 61 and 63;
  - b. The applicable emissions limitations approved into the state implementation plan, including those with a future compliance date; or,
  - c. The emissions rate specified as a federally enforceable permit condition, including those with a future compliance date.
14. "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.
15. "Applicable implementation plan" means those provisions of the state implementation plan approved by the Administrator or a federal implementation plan promulgated for Arizona or any portion of Arizona in accordance with Title I of the Act.
16. "Applicable requirement" means any of the following:
  - a. Any federal applicable requirement.

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- b. Any other requirement established pursuant to this Chapter or A.R.S. Title 49, Chapter 3.
17. "Arizona Testing Manual" means sections 1 and 7 of the Arizona Testing Manual for Air Pollutant Emissions amended as of March 1992 (and no future editions).
18. "ASTM" means the American Society for Testing and Materials.
19. "Attainment area" means any area that has been identified in regulations promulgated by the Administrator as being in compliance with national ambient air quality standards.
20. "Begin actual construction" means, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. With respect to a change in method of operation this term refers to those onsite activities, other than preparatory activities, which mark the initiation of the change.
- a. For purposes of title I, parts C and D and section 112 of the clean air act, and for purposes of applicants that require permits containing limits designed to avoid the application of title I, parts C and D and section 112 of the clean air act, these activities include installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures but do not include any of the following, subject to subsection (20)(c):
- i. Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil.
  - ii. Installation of access roads, driveways and parking lots.
  - iii. Installation of ancillary structures, including fences, office buildings and temporary storage structures, that are not a necessary component of an emissions unit or associated air pollution control equipment for which the permit is required.
  - iv. Ordering and onsite storage of materials and equipment.
- b. For purposes other than those identified in subsection (20)(a), these activities do not include any of the following, subject to subsection (20)(c):
- i. Clearing and grading, including demolition and removal of existing structures and equipment, stripping and stockpiling of topsoil and earthwork cut and fill for foundations.
  - ii. Installation of access roads, parking lots, driveways and storage areas.
  - iii. Installation of ancillary structures, including fences, warehouses, storerooms and office buildings, provided none of these structures impacts the design of any emissions unit or associated air pollution control equipment.
  - iv. Ordering and onsite storage of materials and equipment.
  - v. Installation of underground pipework, including water, sewer, electric and telecommunications utilities.
  - vi. Installation of building and equipment supports, including concrete forms, footers, pilings, foundations, pads and platforms, provided none of these supports impacts the design of any emissions unit or associated air pollution control equipment.
- c. An applicant's performance of any activities that are excluded from the definition of "begin actual construction" under subsection (20)(a) or (b) shall be at the applicant's risk and shall not reduce the applicant's obligations under this Chapter. The director shall evaluate an application for a permit or permit revision and make a decision on the same basis as if the activities allowed under subsection (20)(a) or (b) had not occurred. A.R.S. § 49-401.01(7).
21. "Best available control technology" (BACT) means an emission limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major source or major modification, taking into account energy, environmental, and economic impact and other costs, determined by the Director in accordance with R18-2-406(A)(4) to be achievable for such source or modification.
22. "Btu" means British thermal unit, which is the quantity of heat required to raise the temperature of one pound of water 1°F.
23. "Categorical sources" means the following classes of sources:
- a. Coal cleaning plants with thermal dryers;
  - b. Kraft pulp mills;
  - c. Portland cement plants;
  - d. Primary zinc smelters;
  - e. Iron and steel mills;
  - f. Primary aluminum ore reduction plants;
  - g. Primary copper smelters;
  - h. Municipal incinerators capable of charging more than 250 tons of refuse per day;
  - i. Hydrofluoric, sulfuric, or nitric acid plants;
  - j. Petroleum refineries;
  - k. Lime plants;
  - l. Phosphate rock processing plants;
  - m. Coke oven batteries;
  - n. Sulfur recovery plants;
  - o. Carbon black plants using the furnace process;
  - p. Primary lead smelters;
  - q. Fuel conversion plants;
  - r. Sintering plants;
  - s. Secondary metal production plants;
  - t. Chemical process plants, which shall not include ethanol production facilities that produce ethanol by natural fermentation included in North American Industry Classification System codes 325193 or 312140;
  - u. Fossil-fuel boilers, combinations thereof, totaling more than 250 million Btus per hour heat input;
  - v. Petroleum storage and transfer units with a total storage capacity more than 300,000 barrels;
  - w. Taconite ore processing plants;
  - x. Glass fiber processing plants;
  - y. Charcoal production plants;
  - z. Fossil-fuel-fired steam electric plants and combined cycle gas turbines of more than 250 million Btus per hour heat input.
24. "Categorically exempt activities" means any of the following:
- a. Any combination of diesel-, natural gas- or gasoline-fired engines with cumulative power equal to or less than 145 horsepower.
  - b. Natural gas-fired engines with cumulative power equal to or less than 155 horsepower.

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- c. Gasoline-fired engines with cumulative power equal to or less than 200 horsepower.
- d. Any of the following emergency or stand-by engines used for less than 500 hours in each calendar year, provided the permittee keeps records documenting the hours of operation of the engines:
- i. Any combination of diesel-, natural gas- or gasoline-fired emergency engines with cumulative power equal to or less than 2,500 horsepower.
  - ii. Natural gas-fired emergency engines with cumulative power equal to or less than 2,700 horsepower.
  - iii. Gasoline-fired emergency engines with cumulative power equal to or less than 3,700 horsepower.
- e. Any combination of boilers with a cumulative maximum design heat input capacity of less than 10 million Btu/hr.
25. "CFR" means the Code of Federal Regulations, amended as of July 1, 2011, (and no future editions), with standard references in this Chapter by Title and Part, so that "40 CFR 51" means Title 40 of the Code of Federal Regulations, Part 51.
26. "Charge" means the addition of metal bearing materials, scrap, or fluxes to a furnace, converter or refining vessel.
27. "Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post-combustion stage, at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam, that was not in widespread use as of November 15, 1990.
28. "Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy - Clean Coal Technology," up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20% of the total cost of the demonstration project.
29. "Coal" means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D-388-91, (Classification of Coals by Rank).
30. "Combustion" means the burning of matter.
31. "Commence" means, as applied to construction of a source, or a major modification as defined in Article 4 of this Chapter, that the owner or operator has all necessary preconstruction approvals or permits and either has:
- a. Begun, or caused to begin, a continuous program of actual onsite construction of the source, to be completed within a reasonable time; or
  - b. Entered into binding agreements or contractual obligations, which cannot be cancelled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.
32. "Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, which would result in a change in emissions.
33. "Continuous monitoring system" means a CEMS, CERMS, or CPMS.
34. "Continuous emissions monitoring system" or "CEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, used to sample, condition (if applicable), analyze, and provide, on a continuous basis, a permanent record of emissions.
35. "Continuous emissions rate monitoring system" or "CERMS" means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).
36. "Continuous parameter monitoring system" or "CPMS" means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process or control device operational parameters (for example, control device secondary voltages and electric currents) or other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations) and to provide, on a continuous basis, a permanent record of monitored values.
37. "Controlled atmosphere incinerator" means one or more refractory-lined chambers in which complete combustion is promoted by recirculation of gases by mechanical means.
38. "*Conventional air pollutant*" means any pollutant for which the Administrator has promulgated a primary or secondary national ambient air quality standard. A.R.S. § 49-401.01(12).
39. "*Department*" means the Department of Environmental Quality. A.R.S. § 49-101(2)
40. "*Director*" means the director of environmental quality who is also the director of the department. A.R.S. § 49-101(3)
41. "Discharge" means the release or escape of an effluent from a source into the atmosphere.
42. "Dust" means finely divided solid particulate matter occurring naturally or created by mechanical processing, handling or storage of materials in the solid state.
43. "Dust suppressant" means a chemical compound or mixture of chemical compounds added with or without water to a dust source for purposes of preventing air entrainment.
44. "Effluent" means any air contaminant which is emitted and subsequently escapes into the atmosphere.
45. "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.
46. "Emission" means an air contaminant or gas stream, or the act of discharging an air contaminant or a gas stream, visible or invisible.
47. "Emission standard" or "emission limitation" means a requirement established by the state, a local government, or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.
48. "Emissions unit" means any part of a stationary source which emits or would have the potential to emit any regulated air pollutant and includes an electric steam generating unit.
49. "Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demon-

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- strated under R18-2-311(D) to have a consistent and quantitatively known relationship to the reference method, under specified conditions.
50. "Excess emissions" means emissions of an air pollutant in excess of an emission standard as measured by the compliance test method applicable to such emission standard.
51. "Federal applicable requirement" means any of the following (including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance but have future effective compliance dates):
- a. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52.
  - b. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rulemaking under Title I, including parts C or D, of the Act.
  - c. Any standard or other requirement under section 111 of the Act, including 111(d).
  - d. Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r)(7) of the Act.
  - e. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder and incorporated pursuant to R18-2-333.
  - f. Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act.
  - g. Any standard or other requirement governing solid waste incineration, under section 129 of the Act.
  - h. Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act.
  - i. Any standard or other requirement for tank vessels under section 183(f) of the Act.
  - j. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act.
  - k. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in a Title V permit.
  - l. Any national ambient air quality standard or maximum increase allowed under R18-2-218 or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.
52. "Federal Land Manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.
53. "Federally enforceable" means all limitations and conditions which are enforceable by the Administrator under the Act, including all of the following:
- a. The requirements of the new source performance standards and national emission standards for hazardous air pollutants.
  - b. The requirements of such other state or county rules or regulations approved by the Administrator, including the requirements of state and county operating and new source review permit and registration programs that have been approved by the Administrator. Notwithstanding this subsection, the condition of any permit or registration designated as being enforceable only by the state is not federally enforceable.
  - c. The requirements of any applicable implementation plan.
  - d. Emissions limitations, controls, and other requirements, and any associated monitoring, recordkeeping, and reporting requirements that are included in a permit pursuant to R18-2-306.01 or R18-2-306.02.
54. "Federally listed hazardous air pollutant" means a pollutant listed pursuant to R18-2-1701(9).
55. "Final permit" means the version of a permit issued by the Department after completion of all review required by this Chapter.
56. "Fixed capital cost" means the capital needed to provide all the depreciable components.
57. "Fuel" means any material which is burned for the purpose of producing energy.
58. "Fuel burning equipment" means any machine, equipment, incinerator, device or other article, except stationary rotating machinery, in which combustion takes place.
59. "Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.
60. "Fume" means solid particulate matter resulting from the condensation and subsequent solidification of vapors of melted solid materials.
61. "Fume incinerator" means a device similar to an afterburner installed for the purpose of incinerating fumes, gases and other finely divided combustible particulate matter not previously burned.
62. "Good engineering practice (GEP) stack height" means a stack height meeting the requirements described in R18-2-332.
63. "Hazardous air pollutant" means any federally listed hazardous air pollutant.
64. "Heat input" means the quantity of heat in terms of Btus generated by fuels fed into the fuel burning equipment under conditions of complete combustion.
65. "Incinerator" means any equipment, machine, device, contrivance or other article, and all appurtenances thereof, used for the combustion of refuse, salvage materials or any other combustible material except fossil fuels, for the purpose of reducing the volume of material.
66. "Indian governing body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.
67. "Indian reservation" means any federally recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.
68. "Insignificant activity" means any of the following activities:
- a. Liquid Storage and Piping
    - i. Petroleum product storage tanks containing the following substances, provided the applicant lists and identifies the contents of each tank with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such tank: diesel fuels and fuel oil in storage tanks with capacity of 40,000 gallons or less, lubricating oil, transformer oil, and used oil.

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- ii. Gasoline storage tanks with capacity of 10,000 gallons or less.
  - iii. Storage and piping of natural gas, butane, propane, or liquified petroleum gas, provided the applicant lists and identifies the contents of each stationary storage vessel with a volume of 350 gallons or more and provides threshold values for throughput or capacity or both for each such vessel.
  - iv. Piping of fuel oils, used oil and transformer oil, provided the applicant includes a system description.
  - v. Storage and handling of drums or other transportable containers where the containers are sealed during storage, and covered during loading and unloading, including containers of waste and used oil regulated under the federal Resource Conservation and Recovery Act, 42 U.S.C. 6901-6992(k). Permit applicants must provide a description of material in the containers and the approximate amount stored.
  - vi. Storage tanks of any size containing exclusively soaps, detergents, waxes, greases, aqueous salt solutions, aqueous solutions of acids that are not regulated air pollutants, or aqueous caustic solutions, provided the permit applicant specifies the contents of each storage tank with a volume of 350 gallons or more.
  - vii. Electrical transformer oil pumping, cleaning, filtering, drying and the re-installation of oil back into transformers.
- b. Internal combustion engine-driven compressors, internal combustion engine-driven electrical generator sets, and internal combustion engine-driven water pumps used for less than 500 hours per calendar year for emergency replacement or standby service, provided the permittee keeps records documenting the hours of operation of this equipment.
- c. Low Emitting Processes
- i. Batch mixers with rated capacity of 5 cubic feet or less.
  - ii. Wet sand and gravel production facilities that obtain material from subterranean and subaqueous beds, whose production rate is 200 tons/hour or less, and whose permanent in-plant roads are paved and cleaned to control dust. This does not include activities in emissions units which are used to crush or grind any non-metallic minerals.
  - iii. Powder coating operations.
  - iv. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
  - v. Blast-cleaning equipment using a suspension of abrasive in water and any exhaust system or collector serving them exclusively.
  - vi. Plastic pipe welding.
- d. Site Maintenance
- i. Housekeeping activities and associated products used for cleaning purposes, including collecting spilled and accumulated materials at the source, including operation of fixed vacuum cleaning systems specifically for such purposes.
  - ii. Sanding of streets and roads to abate traffic hazards caused by ice and snow.
  - iii. Street and parking lot striping.
  - iv. Architectural painting and associated surface preparation for maintenance purposes at industrial or commercial facilities.
- e. Sampling and Testing
- i. Noncommercial (in-house) experimental, analytical laboratory equipment which is bench scale in nature, including quality control/quality assurance laboratories supporting a stationary source and research and development laboratories.
  - ii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units.
- f. Ancillary Non-Industrial Activities
- i. General office activities, such as paper shredding, copying, photographic activities, and blueprinting, but not to include incineration.
  - ii. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use.
  - iii. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.
- g. Miscellaneous Activities
- i. Installation and operation of potable, process and waste water observation wells, including drilling, pumping, filtering apparatus.
  - ii. Transformer vents.
69. "Kraft pulp mill" means any stationary source which produces pulp from wood by cooking or digesting wood chips in a water solution of sodium hydroxide and sodium sulfide at high temperature and pressure. Regeneration of the cooking chemicals through a recovery process is also considered part of the kraft pulp mill.
70. "Lead" means elemental lead or alloys in which the predominant component is lead.
71. "Lime hydrator" means a unit used to produce hydrated lime product.
72. "Lime plant" includes any plant which produces a lime product from limestone by calcination. Hydration of the lime product is also considered to be part of the source.
73. "Lime product" means any product produced by the calcination of limestone.
74. "Major modification" is defined as follows:
- a. A major modification is any physical change in or change in the method of operation of a major source that would result in both a significant emissions increase of any regulated NSR pollutant and a significant net emissions increase of that pollutant from the stationary source.
  - b. Any emissions increase or net emissions increase that is significant for nitrogen oxides or volatile organic compounds is significant for ozone.
  - c. For the purposes of this definition, none of the following is a physical change or change in the method of operation:
    - i. Routine maintenance, repair, and replacement;
    - ii. Use of an alternative fuel or raw material by reason of an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act.

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- dination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 - 825r;
- iii. Use of an alternative fuel by reason of an order or rule under section 125 of the Act;
  - iv. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;
  - v. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, any of the following:
    - (1) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before December 21, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976 under 40 CFR 52.21 or under Articles 3 or 4 of this Chapter; or
    - (2) Use of an alternative fuel or raw material by a stationary source that the source is approved to use under any permit issued under R18-2-403;
    - (3) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 21, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
  - vi. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, any of the following:
    - (1) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless the change would be prohibited under any federally enforceable permit condition established after January 6, 1975 under 40 CFR 52.21 or under Articles 3 or 4 of this Chapter;
    - (2) Use of an alternative fuel or raw material by a stationary source that the source is approved to use under any permit issued under 40 CFR 52.21, or under R18-2-406; or
    - (3) An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after January 6, 1975, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
  - vii. Any change in ownership at a stationary source;
  - viii. [Reserved.]
  - ix. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
    - (1) The SIP, and
    - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated;
  - x. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis; and
  - xi. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
- d. This definition shall not apply with respect to a particular regulated NSR pollutant when the major source is complying with the requirements of R18-2-412 for a PAL for that regulated NSR pollutant. Instead, the definition of PAL major modification in R18-2-401(20) shall apply.
75. "Major source" means:
- a. A major source as defined in R18-2-401.
  - b. A major source under section 112 of the Act:
    - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emission 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
    - ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
  - c. A major stationary source, as defined in section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to a section 302(j) category.
76. "Malfunction" means any sudden and unavoidable failure of air pollution control equipment, process equipment or a process to operate in a normal and usual manner, but does not include failures that are caused by poor maintenance, careless operation or any other upset condition or equipment breakdown which could have been prevented by the exercise of reasonable care.
77. "Minor source" means a source of air pollution which is not a major source for the purposes of Article 4 of this Chapter and over which the Director, acting pursuant to A.R.S. § 49-402(B), has asserted jurisdiction.
78. "Minor source baseline area" means the air quality control region in which the source is located.

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79. "Mobile source" means any combustion engine, device, machine or equipment that operates during transport and that emits or generates air contaminants whether in motion or at rest. A.R.S. § 49-401.01(23).
80. "Modification" or "modify" means a physical change in or change in the method of operation of a source that increases the emissions of any regulated air pollutant emitted by such source by more than any relevant de minimis amount or that results in the emission of any regulated air pollutant not previously emitted by more than such de minimis amount. An increase in emissions at a minor source shall be determined by comparing the source's potential to emit before and after the modification. The following exemptions apply:
- A physical or operational change does not include routine maintenance, repair or replacement.
  - An increase in the hours of operation or if the production rate is not considered an operational change unless such increase is prohibited under any permit condition that is legally and practically enforceable by the department.
  - A change in ownership at a source is not considered a modification. A.R.S. § 49-401.01(24).
81. "Monitoring device" means the total equipment, required under the applicable provisions of this Chapter, used to measure and record, if applicable, process parameters.
82. "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on public highways.
83. "Multiple chamber incinerator" means three or more refractory-lined combustion chambers in series, physically separated by refractory walls and interconnected by gas passage ports or ducts.
84. "Natural conditions" includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.
85. "National ambient air quality standard" means the ambient air pollutant concentration limits established by the Administrator pursuant to section 109 of the Act. A.R.S. § 49-401.01(25).
86. "National emission standards for hazardous air pollutants" or "NESHAP" means standards adopted by the Administrator under section 112 of the Act.
87. "Necessary preconstruction approvals or permits" means those permits or approvals required under the Act and those air quality control laws and rules which are part of the SIP.
88. "Net emissions increase" means:
- The amount by which the sum of subsections (88)(a)(i) and (ii) exceeds zero:
    - The increase in emissions of a regulated NSR pollutant from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to R18-2-402(D); and
    - Any other increases and decreases in actual emissions of the regulated NSR pollutant at the source that are contemporaneous with the particular change and are otherwise creditable.
    - For purposes of calculating increases and decreases in actual emissions under subsection (88)(a)(ii), baseline actual emissions shall be determined as provided in the definition of baseline actual emissions in R18-2-401(2), except that R18-2-401(2)(a)(iii) and (b)(iv) shall not apply.
  - An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between:
    - The date five years before a complete application for a permit or permit revision authorizing the particular change is submitted or actual construction of the particular change begins, whichever occurs earlier, and
    - The date that the increase from the particular change occurs.
  - For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, an increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit or permit revision under R18-2-403, which permit is in effect when the increase in actual emissions from the particular change occurs. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, an increase or decrease in actual emissions is creditable only if the Director has not relied on it in issuing a permit under R18-2-406, which permit is in effect when the increase in actual emissions from the particular change occurs.
  - An increase or decrease in actual emissions of sulfur dioxide, nitrogen oxides, PM<sub>10</sub>, or PM<sub>2.5</sub> which occurs before the applicable minor source baseline date, as defined in R18-2-218, is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available.
  - An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.
  - A decrease in actual emissions is creditable only to the extent that it satisfies all of the following conditions:
    - The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions.
    - It is enforceable as a practical matter at and after the time that actual construction on the particular change begins.
    - It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.
    - The emissions unit was actually operated and emitted the specific pollutant.
    - For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, the Director has not relied on it in issuing any permit, permit revision, or registration under Article 4, R18-2-302.01, or R18-2-334, and the state has not relied on it in demonstrating attainment or reasonable further progress.
  - An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit, as defined in R18-2-401(24), that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.
  - Subsection (2)(a) shall not apply for determining creditable increases and decreases.

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- 89. "New source" means any stationary source of air pollution which is subject to a new source performance standard.
- 90. "New source performance standards" or "NSPS" means standards adopted by the Administrator under section 111(b) of the Act.
- 91. "Nitric acid plant" means any facility producing nitric acid 30% to 70% in strength by either the pressure or atmospheric pressure process.
- 92. "Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in the Appendices to 40 CFR 60.
- 93. "Nonattainment area" means an area so designated by the Administrator acting pursuant to section 107 of the Act as exceeding national primary or secondary ambient air standards for a particular pollutant or pollutants.
- 94. "Nonpoint source" means a source of air contaminants which lacks an identifiable plume or emission point.
- 95. "Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.
- 96. "Operation" means any physical or chemical action resulting in the change in location, form, physical properties, or chemical character of a material.
- 97. "Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source.
- 98. "Particulate matter" means any airborne finely divided solid or liquid material with an aerodynamic diameter smaller than 100 micrometers.
- 99. "Particulate matter emissions" means all finely divided solid or liquid materials other than uncombined water, emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
- 100. "Permitting authority" means the department or a county department, agency or air pollution control district that is charged with enforcing a permit program adopted pursuant to A.R.S. § 49-480(A). A.R.S. § 49-401.01(28).
- 101. "Permitting exemption thresholds" for a regulated minor NSR pollutant means the following:

Regulated Air Pollutant	Emission Rate in tons per year (TPY)
PM <sub>2.5</sub> (primary emissions only; levels for precursors are set below)	5
PM <sub>10</sub>	7.5
SO <sub>2</sub>	20
NO <sub>x</sub>	20
VOC	20
CO	50
Pb	0.3

- 102. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, the state and any of its agencies, departments or political subdivisions, as well as a natural person.
- 103. "Planning agency" means an organization designated by the governor pursuant to 42 U.S.C. 7504. A.R.S. § 49-401.01(29).
- 104. "PM<sub>2.5</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53.

- 105. "PM<sub>10</sub>" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53.
- 106. "PM<sub>10</sub> emissions" means finely divided solid or liquid material, with an aerodynamic diameter less than or equal to a nominal 10 micrometers emitted to the ambient air as measured by applicable test methods and procedures described in R18-2-311.
- 107. "Plume" means visible effluent.
- 108. "Pollutant" means an air contaminant the emission or ambient concentration of which is regulated pursuant to this Chapter.
- 109. "Portable source" means any stationary source that is capable of being operated at more than one location.
- 110. "Potential to emit" or "potential emission rate" means the maximum capacity of a stationary source to emit a pollutant, excluding secondary emissions, under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is legally and practically enforceable by the Department or a county under A.R.S. Title 49, Chapter 3; any rule, ordinance, order or permit adopted or issued under A.R.S. Title 49, Chapter 3 or the state implementation plan.
- 111. "Predictive Emissions Monitoring System" or "PEMS" means the total equipment, required under the emission monitoring provisions in this Chapter, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.
- 112. "Primary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary, with an adequate margin of safety, to protect the public health, as specified in Article 2 of this Chapter.
- 113. "Process" means one or more operations, including equipment and technology, used in the production of goods or services or the control of by-products or waste.
- 114. "Project" means a physical change in, or change in the method of operation of, an existing major source.
- 115. "Proposed final permit" means the version of a Class I permit or Class I permit revision that the Department proposes to issue and forwards to the Administrator for review in compliance with R18-2-307(A). A proposed final permit constitutes a final and enforceable authorization to begin actual construction of, but not to operate, a new Class I source or a modification to a Class I source.
- 116. "Proposed permit" means the version of a permit for which the Director offers public participation under R18-2-330 or affected state review under R18-2-307(D).
- 117. "Reactivation of a very clean coal-fired electric utility steam generating unit" means any physical change or change in the method of operation associated with commencing commercial operations by a coal-fired utility unit after a period of discontinued operation if the unit:
  - a. Has not been in operation for the two-year period before enactment of the Clean Air Act Amendments of 1990, and the emissions from the unit continue to

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- be carried in the Director's emissions inventory at the time of enactment;
- b. Was equipped before shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85% and a removal efficiency for particulates of no less than 98%;
  - c. Is equipped with low-NO<sub>x</sub> burners before commencement of operations following reactivation; and
  - d. Is otherwise in compliance with the Act.
118. "Reasonable further progress" means the schedule of emission reductions defined within a nonattainment area plan as being necessary to come into compliance with a national ambient air quality standard by the primary standard attainment date.
119. "Reasonably available control technology" (RACT) means devices, systems, process modifications, work practices or other apparatus or techniques that are determined by the Director to be reasonably available taking into account:
- a. The necessity of imposing the controls in order to attain and maintain a national ambient air quality standard;
  - b. The social, environmental, energy and economic impact of the controls;
  - c. Control technology in use by similar sources; and
  - d. The capital and operating costs and technical feasibility of the controls.
120. "Reclaiming machinery" means any machine, equipment device or other article used for picking up stored granular material and either depositing this material on a conveyor or reintroducing this material into the process.
121. "Reference method" means the methods of sampling and analyzing for an air pollutant as described in the Arizona Testing Manual; 40 CFR 50, Appendices A through K; 40 CFR 51, Appendix M; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C, as incorporated by reference in 18 A.A.C. 2, Appendix 2.
122. "Regulated air pollutant" means any of the following:
- a. Any conventional air pollutant.
  - b. Nitrogen oxides and volatile organic compounds.
  - c. Any pollutant that is subject to a new source performance standard.
  - d. Any pollutant that is subject to a national emission standard for hazardous air pollutants or other requirements established under section 112 of the Act, including sections 112(g), (j), and (r), including the following:
    - i. Any pollutant subject to requirements under section 112(j) of the act. If the administrator fails to promulgate a standard by the date established pursuant to section 112(e) of the act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to section 112(e) of the Act; and
    - ii. Any pollutant for which the requirements of section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the section 112(g)(2) requirement.
  - e. Any Class I or II substance subject to a standard promulgated under title VI of the Act.
123. "Regulated minor NSR pollutant" means any pollutant for which a national ambient air quality standard has been promulgated and the following precursors for such pollutants:
- a. VOC and nitrogen oxides as precursors to ozone.
  - b. Nitrogen oxides and sulfur dioxide as precursors to PM<sub>2.5</sub>.
124. "Regulated NSR pollutant" is defined as follows:
- a. For purposes of determining the applicability of R18-2-403 through R18-2-405 and R18-2-411, regulated NSR pollutant means any pollutant for which a national ambient air quality standard has been promulgated and any pollutant identified under this subsection as a constituent of or precursor to such pollutant, provided that such constituent or precursor pollutant may only be regulated under NSR as part of the regulation of the general pollutant. Precursors for purposes of NSR are the following:
    - i. Volatile organic compounds and nitrogen oxides are precursors to ozone in all areas.
    - ii. Sulfur dioxide is a precursor to PM<sub>2.5</sub> in all areas.
    - iii. Nitrogen oxides are precursors to PM<sub>2.5</sub> in all areas.
    - iv. VOC and ammonia are precursors to PM<sub>2.5</sub> in PM<sub>2.5</sub> nonattainment areas.
  - b. For all other purposes, regulated NSR pollutant means the pollutants identified in subsection (a) and the following:
    - i. Any pollutant that is subject to any new source performance standard except greenhouse gases as defined in 40 CFR 86.1818-12(a).
    - ii. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act as of July 1, 2011.
    - iii. Any pollutant that is otherwise subject to regulation under the Act, except greenhouse gases as defined in 40 CFR 86.1818-12(a).
  - c. Notwithstanding subsections (124)(a) and (b), the term regulated NSR pollutant shall not include any or all hazardous air pollutants either listed in section 112 of the Act, or added to the list pursuant to section 112(b)(2) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.
  - d. PM<sub>2.5</sub> emissions and PM<sub>10</sub> emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On and after January 1, 2011, condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for PM<sub>2.5</sub> and PM<sub>10</sub> in permits issued under Article 4.
125. "Repowering" means:
- a. Replacing an existing coal-fired boiler with one of the following clean coal technologies:
    - i. Atmospheric or pressurized fluidized bed combustion;
    - ii. Integrated gasification combined cycle;
    - iii. Magnetohydrodynamics;
    - iv. Direct and indirect coal-fired turbines;
    - v. Integrated gasification fuel cells; or
    - vi. As determined by the Administrator, in consultation with the United States Secretary of

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- Energy, a derivative of one or more of the above technologies; and
- vii. Any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.
  - b. Repowering also includes any oil, gas, or oil and gas-fired unit that has been awarded clean coal technology demonstration funding as of January 1, 1991, by the United States Department of Energy.
  - c. The Director shall give expedited consideration to permit applications for any source that satisfies the requirements of this subsection (and) is granted an extension under section 409 of the Act.
126. "Run" means the net period of time during which an emission sample is collected, which may be, unless otherwise specified, either intermittent or continuous within the limits of good engineering practice.
127. "Secondary ambient air quality standards" means the ambient air quality standards which define levels of air quality necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant, as specified in Article 2 of this Chapter.
128. "Secondary emissions" means emissions which are specific, well defined, quantifiable, occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself, and impact the same general area as the stationary source or modification which causes the secondary emissions. Secondary emissions include emissions from any offsite support facility which would not otherwise be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.
129. "Section 302(j) category" means:
- a. Any of the classes of sources listed in the definition of categorical source in subsection (23); or
  - b. Any category of affected facility which, as of August 7, 1980, is being regulated under section 111 or 112 of the Act.
130. "Shutdown" means the cessation of operation of any air pollution control equipment or process equipment for any purpose, except routine phasing out of process equipment.
131. "Significant" means, in reference to a significant emissions increase, a net emissions increase, a stationary source's potential to emit or a stationary source's maximum capacity to emit with any elective limits as defined in R18-2-301(13):
- a. A rate of emissions of conventional pollutants that would equal or exceed any of the following:

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
PM <sub>10</sub>	15 tpy
PM <sub>2.5</sub>	10 tpy of direct PM <sub>2.5</sub> emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions.

- Ozone 40 tpy of VOC or nitrogen oxides
  - Lead 0.6 tpy
- b. For purposes of determining the applicability of R18-2-302(B)(2) or R18-2-406, in addition to the rates specified in subsection (131)(a), a rate of emissions of non-conventional pollutants that would equal or exceed any of the following:
- | Pollutant   | Emissions Rate             |
|---|----------------------------|
| Particulate matter  | 25 tpy                     |
| Fluorides   | 3 tpy                      |
| Sulfuric acid mist  | 7 tpy                      |
| Hydrogen sulfide (H <sub>2</sub> S)   | 10 tpy                     |
| Total reduced sulfur (including H <sub>2</sub> S)   | 10 tpy                     |
| Reduced sulfur compounds (including H <sub>2</sub> S)   | 10 tpy                     |
| Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans) | 3.5 x 10 <sup>-6</sup> tpy |
| Municipal waste combustor metals (measured as particulate matter)   | 15 tpy                     |
| Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)                                   | 40 tpy                     |
| Municipal solid waste landfill emissions (measured as nonmethane organic compounds)                                       | 50 tpy                     |
| Any regulated NSR pollutant not specifically listed in this subsection (or) subsection (131)(a), except for ammonia.      | Any emission rate          |
- c. In ozone nonattainment areas classified as serious or severe, the emission rate for nitrogen oxides or VOC determined under R18-2-405.
  - d. In a carbon monoxide nonattainment area classified as serious, a rate of emissions that would equal or exceed 50 tons per year, if the Administrator has determined that stationary sources contribute significantly to carbon monoxide levels in that area.
  - e. In PM<sub>2.5</sub> nonattainment areas, an emission rate that would equal or exceed 40 tons per year of VOC as a precursor of PM<sub>2.5</sub>.
  - f. In PM<sub>2.5</sub> nonattainment areas, for purposes of determining the applicability of R18-2-403 or R18-2-404, an emission rate that would equal or exceed 40 tons per year of ammonia, as a precursor to PM<sub>2.5</sub>. This subsection shall take effect on the effective date of the Administrator's action approving it as part of the state implementation plan.
  - g. Notwithstanding the emission rates listed in subsection (131)(a) or (b), for purposes of determining the applicability of R18-2-406, any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than 1 µg/m<sup>3</sup> (24-hour average).

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132. "Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant as defined in this Section for that pollutant.
133. "Smoke" means particulate matter resulting from incomplete combustion.
134. "*Source*" means any building, structure, facility or installation that may cause or contribute to air pollution or the use of which may eliminate, reduce or control the emission of air pollution. A.R.S. § 49-401.01(23).
135. "Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.
136. "Stack in existence" means that the owner or operator had either:
- Begun, or caused to begin, a continuous program of physical onsite construction of the stack;
  - Entered into binding agreements or contractual obligations, which could not be cancelled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.
137. "Start-up" means the setting into operation of any air pollution control equipment or process equipment for any purpose except routine phasing in of process equipment.
138. "State implementation plan" or "SIP" means the accumulated record of enforceable air pollution control measures, programs and plans adopted by the Director and submitted to and approved by the Administrator pursuant to 42 U.S.C. 7410.
139. "Stationary rotating machinery" means any gas engine, diesel engine, gas turbine, or oil fired turbine operated from a stationary mounting and used for the production of electric power or for the direct drive of other equipment.
140. "Stationary source" means any building, structure, facility or installation which emits or may emit any regulated NSR pollutant, any regulated air pollutant or any pollutant listed under section 112(b) of the act. "Building," "structure," "facility," or "installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" as described in the "Standard Industrial Classification Manual, 1987."
141. "Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Act, or a nationally-applicable regulation codified by the administrator in 40 CFR chapter I, subchapter C, that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity.
142. "Sulfuric acid plant" means any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized as a means of preventing emissions of sulfur dioxide or other sulfur compounds to the atmosphere.
143. "Temporary clean coal technology demonstration project" means a clean coal technology demonstration project operated for five years or less, and that complies with the applicable implementation plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.
144. "Temporary source" means a source which is portable, as defined in A.R.S. § 49-401.01(23) and which is not an affected source.
145. "Total reduced sulfur" (TRS) means the sum of the sulfur compounds, primarily hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, that are released during kraft pulping and other operations and measured by Method 16 in 40 CFR 60, Appendix A.
146. "Trivial activities" means activities and emissions units, such as the following, that may be omitted from a permit or registration application. Certain of the following listed activities include qualifying statements intended to exclude similar activities:
- Low-Emitting Combustion
    - Combustion emissions from propulsion of mobile sources;
    - Emergency or backup electrical generators at residential locations;
    - Portable electrical generators that can be moved by hand from one location to another. "Moved by hand" means capable of being moved without the assistance of any motorized or non-motorized vehicle, conveyance, or device;
  - Low- Or Non-Emitting Industrial Activities
    - Blacksmith forges;
    - Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling, sawing, grinding, turning, routing or machining of ceramic art work, precision parts, leather, metals, plastics, fiberboard, masonry, carbon, glass, or wood;
    - Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that do not result in emission of HAP metals. Brazing, soldering, and welding equipment, and cutting torches related to manufacturing and construction activities that emit HAP metals are insignificant activities based on size or production level thresholds. Brazing, soldering, and welding equipment, and cutting torches directly related to plant maintenance and upkeep and repair or maintenance shop activities that emit HAP metals are treated as trivial and listed separately in this definition;
    - Drop hammers or hydraulic presses for forging or metalworking;
    - Air compressors and pneumatically operated equipment, including hand tools;
    - Batteries and battery charging stations, except at battery manufacturing plants;
    - Drop hammers or hydraulic presses for forging or metalworking;
    - Equipment used exclusively to slaughter animals, not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment;
    - Hand-held applicator equipment for hot melt adhesives with no VOC in the adhesive formulation;

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- x. Equipment used for surface coating, painting, dipping, or spraying operations, except those that will emit VOC or HAP;
- xi. CO2 lasers used only on metals and other materials that do not emit HAP in the process;
- xii. Electric or steam-heated drying ovens and autoclaves, but not the emissions from the articles or substances being processed in the ovens or autoclaves or the boilers delivering the steam;
- xiii. Salt baths using nonvolatile salts that do not result in emissions of any regulated air pollutants;
- xiv. Laser trimmers using dust collection to prevent fugitive emissions;
- xv. Process water filtration systems and demineralizers;
- xvi. Demineralized water tanks and demineralizer vents;
- xvii. Oxygen scavenging or de-aeration of water;
- xviii. Ozone generators;
- xix. Steam vents and safety relief valves;
- xx. Steam leaks; and
- xxi. Steam cleaning operations and steam sterilizers;
- xxii. Use of vacuum trucks and high pressure washer/cleaning equipment within the stationary source boundaries for cleanup and in-source transfer of liquids and slurried solids to waste water treatment units or conveyances;
- xxiii. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing.
- xxiv. Electric motors.
- c. Building and Site Maintenance Activities
  - i. Plant and building maintenance and upkeep activities, including grounds-keeping, general repairs, cleaning, painting, welding, plumbing, re-tarring roofs, installing insulation, and paving parking lots, if these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit revision. Cleaning and painting activities qualify as trivial activities if they are not subject to VOC or hazardous air pollutant control requirements;
  - ii. Repair or maintenance shop activities not related to the source's primary business activity, not including emissions from surface coating, de-greasing, or solvent metal cleaning activities, and not otherwise triggering a permit revision;
  - iii. Janitorial services and consumer use of janitorial products;
  - iv. Landscaping activities;
  - v. Routine calibration and maintenance of laboratory equipment or other analytical instruments;
  - vi. Sanding of streets and roads to abate traffic hazards caused by ice and snow;
  - vii. Street and parking lot striping;
  - viii. Caulking operations which are not part of a production process.
- d. Incidental, Non-Industrial Activities
  - i. Air-conditioning units used for human comfort that do not have applicable requirements under Title VI of the Act;
  - ii. Ventilating units used for human comfort that do not exhaust air pollutants into the ambient air from any manufacturing, industrial or commercial process;
  - iii. Tobacco smoking rooms and areas;
  - iv. Non-commercial food preparation;
  - v. General office activities, such as paper shredding, copying, photographic activities, pencil sharpening and blueprinting, but not including incineration;
  - vi. Laundry activities, except for dry-cleaning and steam boilers;
  - vii. Bathroom and toilet vent emissions;
  - viii. Fugitive emissions related to movement of passenger vehicles, if the emissions are not counted for applicability purposes under subsection (146)(c) of the definition of major source in this Section and any required fugitive dust control plan or its equivalent is submitted with the application;
  - ix. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) where the product is used at a source in the same manner as normal consumer use;
  - x. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition;
  - xi. Circuit breakers;
  - xii. Adhesive use which is not related to production.
- e. Storage, Piping and Packaging
  - i. Storage tanks, vessels, and containers holding or storing liquid substances that will not emit any VOC or HAP;
  - ii. Storage tanks, reservoirs, and pumping and handling equipment of any size containing soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
  - iii. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
  - iv. Chemical storage associated with water and wastewater treatment where the water is treated for consumption and/or use within the permitted facility;
  - v. Storage cabinets for flammable products;
  - vi. Natural gas pressure regulator vents, excluding venting at oil and gas production facilities;
  - vii. Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, if appropriate lids and covers are used;
- f. Sampling and Testing
  - i. Vents from continuous emissions monitors and other analyzers;
  - ii. Bench-scale laboratory equipment used for physical or chemical analysis, but not laboratory fume hoods or vents;
  - iii. Equipment used for quality control, quality assurance, or inspection purposes, including sampling equipment used to withdraw materials for analysis;
  - iv. Hydraulic and hydrostatic testing equipment;

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- v. Environmental chambers not using HAP gases;
- vi. Soil gas sampling;
- vii. Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions but that are not regulated as emission units;
- g. Safety Activities
- i. Fire suppression systems;
  - ii. Emergency road flares;
- h. Miscellaneous Activities
- i. Shock chambers;
  - ii. Humidity chambers;
  - iii. Solar simulators;
  - iv. Cathodic protection systems;
  - v. High voltage induced corona; and
  - vi. Filter draining.
147. "Unclassified area" means an area which the Administrator, because of a lack of adequate data, is unable to classify as an attainment or nonattainment area for a specific pollutant, and which, for purposes of this Chapter, is treated as an attainment area.
148. "Uncombined water" means condensed water containing analytical trace amounts of other chemical elements or compounds.
149. "Urban or suburban open area" means an unsubdivided tract of land surrounding a substantial urban development of a residential, industrial, or commercial nature and which, though near or within the limits of a city or town, may be uncultivated, used for agriculture, or lie fallow.
150. "Vacant lot" means a subdivided residential or commercial lot which contains no buildings or structures of a temporary or permanent nature.
151. "Vapor" means the gaseous form of a substance normally occurring in a liquid or solid state.
152. "Visibility impairment" means any humanly perceptible change in visibility (light extinction, visual range, contrast, coloration) from that which would have existed under natural conditions.
153. "Visible emissions" means any emissions which are visually detectable without the aid of instruments and which contain particulate matter.
154. "Volatile organic compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions. This includes any such organic compound other than the following:
- a. Methane;
  - b. Ethane;
  - c. Methylene chloride (dichloromethane);
  - d. 1,1,1-trichloroethane (methyl chloroform);
  - e. 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113);
  - f. Trichlorofluoromethane (CFC-11);
  - g. Dichlorodifluoromethane (CFC-12);
  - h. Chlorodifluoromethane (HCFC-22);
  - i. Trifluoromethane (HFC-23);
  - j. 1,2-dichloro 1,1,2,2-tetrafluoroethane (CFC-114);
  - k. Chloropentafluoroethane (CFC-115);
  - l. 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123);
  - m. 1,1,1,2-tetrafluoroethane (HFC-134(a));
  - n. 1,1-dichloro 1-fluoroethane (HCFC-141(b));
  - o. 1-chloro 1,1-difluoroethane (HCFC-142(b));
  - p. 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124);
  - q. Pentafluoroethane (HFC-125);
  - r. 1,1,2,2-tetrafluoroethane (HFC-134);
  - s. 1,1,1-trifluoroethane (HFC-143(a));
  - t. 1,1-difluoroethane (HFC-152(a));
  - u. Parachlorobenzotrifluoride (PCBTF);
  - v. Cyclic, branched, or linear completely methylated siloxanes;
  - w. Acetone;
  - x. Perchloroethylene (tetrachloroethylene);
  - y. 3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225(ca));
  - z. 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225(cb));
  - aa. 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee);
  - bb. Difluoromethane (HFC-32);
  - cc. Ethylfluoride (HFC-161);
  - dd. 1,1,1,3,3,3-hexafluoropropane (HFC-236(fa));
  - ee. 1,1,2,2,3-pentafluoropropane (HFC-245(ca));
  - ff. 1,1,2,3,3-pentafluoropropane (HFC-245(ea));
  - gg. 1,1,1,2,3-pentafluoropropane (HFC-245(eb));
  - hh. 1,1,1,3,3-pentafluoropropane (HFC-245(fa));
  - ii. 1,1,1,2,3,3-hexafluoropropane (HFC-236(ea));
  - jj. 1,1,1,3,3-pentafluorobutane (HFC-365(mfc));
  - kk. Chlorofluoromethane (HCFC-31);
  - ll. 1 chloro-1-fluoroethane (HCFC-151(a));
  - mm. 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123(a));
  - nn. 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>);
  - oo. 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>);
  - pp. 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>);
  - qq. 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>);
  - rr. Methyl acetate; and
  - ss. 1,1,1,2,2,3,3-heptafluoro-3-methoxypropane (n-C<sub>3</sub>F<sub>7</sub>OCH<sub>3</sub>, HFE—7000);
  - tt. 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE – 7500);
  - uu. 1,1,1,2,3,3,3-hentafluoropropane (HFC 227ea);
  - vv. Methyl formate (HCOOCH<sub>3</sub>); and
  - ww. (1) 1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane (HFE-7300);
  - xx. Propylene carbonate;
  - yy. Dimethyl carbonate; and
  - zz. Trans -1,3,3,3-tetrafluoropropene;
  - aaa. HCF<sub>2</sub>OCF<sub>2</sub>H (HFE-134);
  - bbb. HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>H (HFE-236(cal2));
  - ccc. HCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (HFE-338(pcc13));
  - ddd. HCF<sub>2</sub>OCF<sub>2</sub>OCF<sub>2</sub>CF<sub>2</sub>OCF<sub>2</sub>H (H-Galden 1040x or H-Galden ZT 130 (or 150 or 180));
  - eee. Trans 1-chloro-3,3,3- trifluoroprop-1-ene;
  - fff. 2,3,3,3-tetrafluoropropene;
  - ggg. 2-amino-2-methyl-1-propanol; and
  - hhh. Perfluorocarbon compounds that fall into these classes:
    - i. Cyclic, branched, or linear, completely fluorinated alkanes.
    - ii. Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations.
    - iii. Cycle, branched, or linear, completely fluorinated tertiary amines with no unsaturations; or
    - iv. Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.
  - v. The following compound is VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling and inventory

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requirements which apply to VOC and shall be uniquely identified in emission reports, but is not VOC for purposes of VOC emissions limitations or VOC content requirements: t-butyl acetate.

155. "Wood waste burner" means an incinerator designed and used exclusively for the burning of wood wastes consisting of wood slabs, scraps, shavings, barks, sawdust or other wood material, including those that generate steam as a by-product.

**Historical Note**

Former Section R9-3-101 repealed, new Section R9-3-101 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, paragraph (133) (Supp. 80-1). Editorial correction, paragraph (58) (Supp. 80-2). Amended effective July 9, 1980. Amended by adding new paragraphs (24), (55), (102), and (115) and renumbering accordingly, effective August 29, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-5). Amended paragraph (133), added paragraph (156) and renumbered accordingly effective September 28, 1984 (Supp. 84-5). Amended paragraph (29) by deleting (aa) and (bb) effective August 9, 1985 (Supp. 85-4). Former Section R9-3-101 renumbered without change as R18-2-101 (Supp. 87-3). Amended paragraph (98) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective October 7, 1994 (Supp. 94-4). Amended effective February 28, 1995 (Supp. 95-1). Amended effective August 1, 1995 (Supp. 95-3). Amended effective January 31, 1997; filed with the Office of Secretary of State January 10, 1997 (Supp. 97-1). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 9 A.A.R. 4541, effective December 2, 2003 (Supp. 03-4). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

**R18-2-102. Incorporated Materials**

- A. The following documents are incorporated by reference and are on file with the Office of the Secretary of State (1700 W. Washington St., Suite 103, Phoenix, AZ 85007) and the Department (1110 W. Washington St., Phoenix, AZ 85007):
1. Sections 1 and 7 of the Department's "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992 (and no future editions).
  2. All ASTM test methods referenced in this Chapter as of the year specified in the reference (and no future amendments). They are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103-1187.

3. The U.S. Government Printing Office's "Standard Industrial Classification Manual, 1987" (and no future editions).

- B. The Code of Federal Regulations is published by the United States Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see [http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st\\_12=AZ&flag=searchp](http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st_12=AZ&flag=searchp)). It is also available online at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>.

**Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-103. Applicable Implementation Plan; Savings**

No rule adopted in this Chapter shall preempt or nullify any applicable requirement or emission standard in an applicable implementation plan unless the Director revises the applicable implementation plan in conformance with the requirements of 40 CFR 51, Subpart F, and the Administrator approves the revision.

**Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS****R18-2-201. Particulate Matter: PM<sub>10</sub> and PM<sub>2.5</sub>**

- A. PM<sub>10</sub> Standards
1. The level of the primary and secondary ambient air quality standards for PM<sub>10</sub> is 150 micrograms per cubic meter of PM<sub>10</sub> – 24-hour average concentration.
  2. To determine attainment of the primary and secondary standards, a person shall measure PM<sub>10</sub> in the ambient air by:
    - a. A reference method based on 40 CFR 50, Appendix J, and designated according to 40 CFR 53; or
    - b. An equivalent method designated according to 40 CFR 53.
  3. The primary and secondary 24-hour ambient air quality standards for PM<sub>10</sub> are attained when the expected number of days per calendar year with a 24-hour average concentration above 150 micrograms per cubic meter, determined according to 40 CFR 50, Appendix K, is less than or equal to one.
- B. PM<sub>2.5</sub> Standards
1. The primary ambient air quality standards for PM<sub>2.5</sub> are:
    - a. 12 micrograms per cubic meter of PM<sub>2.5</sub> – annual arithmetic mean concentration.
    - b. 35 micrograms per cubic meter of PM<sub>2.5</sub> – 24-hour average concentration.
  2. The secondary ambient air quality standards for PM<sub>2.5</sub> are:

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- a. 15 micrograms per cubic meter of PM<sub>2.5</sub> – annual arithmetic mean concentration.
  - b. 35 micrograms per cubic meter of PM<sub>2.5</sub> – 24-hour average concentration.
3. To determine attainment of the primary and secondary standards, a person shall measure PM<sub>2.5</sub> in the ambient air by:
    - a. A reference method based on 40 CFR 50, Appendix L, and designated according to 40 CFR 53; or
    - b. An equivalent method designated according to 40 CFR 53.
  4. The primary annual ambient air quality standard for PM<sub>2.5</sub> is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 12 micrograms per cubic meter.
  5. The secondary annual ambient air quality standard for PM<sub>2.5</sub> is met when the annual arithmetic mean concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 15 micrograms per cubic meter.
  6. The primary and secondary 24-hour ambient air quality standards for PM<sub>2.5</sub> are met when the 98th percentile 24-hour concentration, determined according to 40 CFR 50, Appendix N, is less than or equal to 35 micrograms per cubic meter.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-201 repealed, new Section R9-3-201 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (E) (Supp. 80-2). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection(B)(1) and deleted subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-201 renumbered without change as Section R18-2-201 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Section corrected to include subsection (B), which was inadvertently omitted in Supp. 05-3 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-202. Sulfur Oxides (Sulfur Dioxide)**

- A. The primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide, are:
  1. 0.03 parts per million (ppm) (80 µg/m<sup>3</sup>) -- annual arithmetic mean.
  2. 0.14 parts per million (ppm) (365 µg/m<sup>3</sup>) – maximum 24-hour concentration not to be exceeded more than once per calendar year.
  3. 75 parts per billion (ppb) – maximum one-hour concentration. The one-hour primary standard is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of the daily maximum one-hour average concentrations is less than or equal to 75 parts per billion, as determined according to 40 CFR 50, Appendix T.
- B. The secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide, is 0.5 parts per million (ppm) (1300 µg/m<sup>3</sup>) -- maximum three-hour concentration not to be exceeded more than once per year.
- C. The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix A or A-1, or by a Federal Equivalent Method designated according to 40 CFR 53.

- D. The standards in subsections (A)(1) and (2) shall apply:
  1. In an area designated nonattainment for a standard in subsection (A)(1) or (2) as of August 23, 2011, and areas not meeting a state implementation plan call for a standard in subsection (A)(1) or (2), until the state submits pursuant to section 191 of the Act, and the Administrator approves, a state implementation plan providing for attainment the standard in subsection (A)(3) in that area.
  2. In areas other than those identified in subsection (D)(1), until the effective date of the designation of that area, pursuant to section 107 of the act, for the standard in subsection (A)(3).

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-202 repealed, new Section R9-3-202 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended by deleting subsections (C) through (E) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-202 renumbered without change as Section R18-2-202 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-203. Ozone**

- A. The eight-hour average primary ambient air quality standard for ozone is 0.070 ppm.
- B. The eight-hour average secondary ambient air quality standard for ozone is 0.070 ppm.
- C. To determine attainment of the primary and secondary standards, a person shall measure ozone in the ambient air by:
  1. A reference method based on 40 CFR 50, Appendix D, and designated according to 40 CFR 53; or
  2. An equivalent method designated according to 40 CFR 53.
- D. The eight-hour average primary ambient air quality standard for ozone is met at an ambient air quality monitoring site when the three-year average of the annual fourth highest daily maximum eight-hour average ozone concentration is less than or equal to 0.070 ppm, determined according to 40 CFR 50, Appendix U.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-204 repealed, new Section R9-3-204 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-204 renumbered without change as Section R18-2-204 (Supp. 87-3). Section R18-2-103 renumbered from R18-2-204 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-204. Carbon monoxide**

- A. The primary ambient air quality standards for carbon monoxide are:

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1. 9 parts per million (10 milligrams per cubic meter) -- maximum eight-hour concentration not to be exceeded more than once per year.
  2. 35 parts per million (40 milligrams per cubic meter) -- maximum one-hour concentration not to be exceeded more than once per year.
- B.** An eight-hour average shall be considered valid if at least 75% of the hourly averages for the eight-hour period are available. In the event that only six or seven hourly averages are available, the eight-hour average shall be computed on the basis of the hours available using 6 or 7 as the divisor.
- C.** When summarizing data for comparison with the standards, averages shall be stated to one decimal place. Comparison of the data with the levels of the standards in parts per million shall be made in terms of integers with fractional parts of 0.5 or greater rounding up.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-205 repealed, new Section R9-3-205 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-205 renumbered without change as Section R18-2-205 (Supp. 87-3). Former Section R18-2-204 renumbered to R18-2-203, new Section R18-2-204 renumbered from R18-2-205 and amended effective September 26, 1990 (Supp. 90-3).

**R18-2-205. Nitrogen Oxides (Nitrogen Dioxide)**

- A.** The primary ambient air quality standards for oxides of nitrogen, measured in the ambient air as nitrogen dioxide, are:
1. 53 parts per billion -- annual average concentration.
  2. 100 parts per billion -- one-hour average concentration.
- B.** The secondary ambient air quality standard for nitrogen dioxide is 0.053 (parts per million (100 micrograms per cubic meter) -- annual arithmetic mean.
- C.** The levels of the standards shall be measured by a reference method based on 40 CFR 50, Appendix F or a federal equivalent method designated in accordance with 40 CFR 53.
- D.** The annual primary standard is met when the annual average concentration in a calendar year is less than or equal to 53 ppb, as determined in accordance with 40 CFR, Appendix S for the annual standard.
- E.** The one-hour primary standard is met when the three-year average of the annual 98th percentile of the daily maximum one-hour average concentration is less than or equal to 100 parts per billion, as determined in accordance with 40 CFR 50, Appendix S.
- F.** The secondary standard is attained when the annual arithmetic mean concentration in a calendar year is less than or equal to 0.053 ppm, rounded to three decimal places, with fractional parts equal to or greater than 0.0005 ppm rounded up. To demonstrate attainment, an annual mean shall be based upon hourly data that is at least 75% complete or upon data derived from the manual methods, that is at least 75% complete for the scheduled sampling days in each calendar quarter.

**Historical Note**

Amended effective December 22, 1976 (Supp. 76-5). Former Section R9-3-206 repealed, new Section R9-3-206 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section

R9-3-206 renumbered without change as Section R18-2-206 (Supp. 87-3). Former Section R18-2-205 renumbered to R18-2-204, new Section R18-2-205 renumbered from R18-2-206 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-206. Lead**

- A.** The primary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter -- maximum arithmetic mean averaged over a three-month period.
- B.** The secondary ambient air quality standard for lead and its compounds, measured as elemental lead, is 0.15 micrograms per cubic meter -- maximum arithmetic mean averaged over a three-month period.
- C.** The level of the standards shall be measured by a reference method based on 40 CFR 50, Appendix G and designated in accordance with 40 CFR 53, or by an equivalent designated in accordance with part 53 of this chapter.
- D.** The national primary and secondary ambient air quality standards for lead are met when the maximum arithmetic three-month mean concentration for a three-year period, as determined in accordance with 40 CFR 50, Appendix R, is less than or equal to 0.15 micrograms per cubic meter.
- E.** The former primary and secondary ambient air quality standards for lead of 1.5 micrograms per cubic meter averaged over a calendar quarter shall apply to an area until one year after the effective date of the designation of that area, pursuant to section 107 of the Act, for the standards in subsections (A) and (B).

**Historical Note**

Former Section R9-3-207 repealed effective May 14, 1979 (Supp. 79-1). New Section R9-3-207 adopted effective October 2, 1979 (Supp. 79-5). Amended effective August 29, 1980 (Supp. 80-4). Amended by deleting subsections (B) through (D) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-207 renumbered without change as Section R18-2-207 (Supp. 87-3). Former Section R18-2-206 renumbered to R18-2-205, new Section R18-2-206 renumbered from R18-2-207 and amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-207. Renumbered****Historical Note**

Former Section R9-3-207 renumbered to R18-2-206 effective September 26, 1990 (Supp. 90-3).

**R18-2-208. Reserved****R18-2-209. Reserved****R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations**

40 CFR 81.303 as amended as of July 1, 2014 (and no future amendments or editions) is incorporated by reference as an applicable requirement and on file with the Department of Environmental Quality. 40 CFR 81.303 is available from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final

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rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-211. Reserved**

**R18-2-212. Reserved**

**R18-2-213. Reserved**

**R18-2-214. Reserved**

**R18-2-215. Ambient air quality monitoring methods and procedures**

- A. Only those methods which have been either designated by the Administrator as reference or equivalent methods or approved by the Director shall be used to monitor ambient air.
- B. Quality assurance, monitor siting, and sample probe installation procedures shall be in accordance with procedures described in the Appendices to 40 CFR 58.
- C. The Director may approve other procedures upon a finding that the proposed procedures are substantially equivalent or superior to procedures in the Appendices to 40 CFR 58.

**Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-215 renumbered without change as Section R18-2-215 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3).

**R18-2-216. Interpretation of Ambient Air Quality Standards and Evaluation of Air Quality Data**

Unless otherwise specified, interpretation of all ambient air quality standards contained in this Article shall be in accordance with 40 CFR 50, incorporated by reference in Appendix 2 of this Chapter.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-216 repealed, new Section R9-3-216 adopted effective August 29, 1980 (Supp. 80-4). Former Section R9-3-216 renumbered without change as Section R18-2-216 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-217. Designation and Classification of Attainment Areas**

- A. All areas shall be classified as either Class I, Class II or Class III.
- B. All of the following areas which were in existence on August 7, 1977 shall be Class I areas irrespective of attainment status and shall not be redesignated:
  - 1. International parks;
  - 2. National wilderness areas which exceed 5,000 acres in size;
  - 3. National memorial parks which exceed 5,000 acres in size; and
  - 4. National parks which exceed 6,000 acres in size.
- C. Areas which were redesignated as Class I under regulations promulgated before August 7, 1977, shall remain Class I, but may be redesignated as provided in this Section.

D. Any other area, unless otherwise specified in the legislation creating such an area, is initially designated Class II, but may be redesignated as provided in this Section.

- E. The following areas shall be designated only as Class I or II:
  1. An area which as of August 7, 1977, exceeds 10,000 acres in size and is one of the following:
    - a. A national monument,
    - b. A national primitive area,
    - c. A national preserve,
    - d. A national recreational area,
    - e. A national wild and scenic river,
    - f. A national wildlife refuge,
    - g. A national lakeshore or seashore.
  2. A national park or national wilderness area established after August 7, 1977, which exceeds 10,000 acres in size.

F. Except as otherwise provided in subsections (B) to (E), the Governor may redesignate areas of the state as Class I or Class II, provided that the following requirements are fulfilled:

1. At least one public hearing is held in or near the area affected in accordance with 40 CFR 51.102;
2. Other states, Indian governing bodies and Federal Land Managers, whose land may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing.
3. A discussion document of the reasons for the proposed redesignation including a description and analysis of health, environmental, economic, social and energy effects of the proposed redesignation is prepared by the Governor or the Governor's designee. The discussion document shall be made available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing shall contain appropriate notification of the availability of such discussion document.
4. Prior to the issuance of notice respecting the redesignation of an area which includes any federal lands, the Governor or the Governor's designee has provided written notice to the appropriate Federal Land Manager and afforded the Federal Land Manager adequate opportunity, not in excess of 60 days, to confer with the state respecting the redesignation and to submit written comments and recommendations. The Governor or the Governor's designee shall publish a list of any inconsistency between such redesignation and such recommendations, together with the reasons for making such redesignation against the recommendation of the Federal Land Manager, if any Federal Land Manager has submitted written comments and recommendations.
5. The redesignation is proposed after consultation with the elected leadership of local governments in the area covered by the proposed redesignation.
6. The redesignation is submitted to the Administrator as a revision to the SIP.

G. Except as otherwise provided in subsections (B) to (E), the Governor may redesignate areas of the state as Class III if all of the following criteria are met:

1. Such redesignation meets the requirements of subsection (F);
2. Such redesignation has been approved after consultation with the appropriate committee of the legislature if it is in session or with the leadership of the legislature if it is not in session.
3. The general purpose units of local government representing a majority of the residents of the area to be redesignated concur in the redesignation;
4. Such redesignation shall not cause, or contribute to, a concentration of any air pollutant which exceeds any

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- national ambient air quality standard or any maximum increase allowed under R18-2-218;
- 5. For any new major source as defined in R18-2-401 or a major modification of such source which may be permitted to be constructed and operated only if the area in question is redesignated as Class III, any permit application and materials submitted as part of the application shall be available for public inspection prior to any public hearing on the redesignation of the area as Class III.
- 6. The redesignation is submitted to the Administrator as a revision to the SIP.
- H. A redesignation shall not be effective until approved by the Administrator as part of an applicable implementation plan. If the Administrator disapproves the redesignation, the classification of the area shall be that which was in effect before the disapproved redesignation.
- I. Lands within the exterior boundaries of Indian reservations may be redesignated only by the appropriate Indian governing body.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Amended and subsection (B) renumbered to Section R18-2-218 effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-218. Limitation of Pollutants in Classified Attainment Areas**

- A. Areas designated as Class I, II, or III shall be limited to the following increases in air pollutant concentrations occurring over the baseline concentration; provided that for any period other than an annual period, the applicable maximum allowable increase may be exceeded once per year at any one location:

**CLASS I**

Maximum Allowable Increase (Micrograms per cubic meter)

Particulate matter: PM<sub>2.5</sub>

Annual arithmetic mean	1
24-hr maximum	2

Particulate matter: PM<sub>10</sub>

Annual arithmetic mean	4
24-hour maximum	8

Sulfur dioxide:

Annual arithmetic mean	2
24-hour maximum	5
3-hour maximum	25

Nitrogen dioxide:

Annual arithmetic mean	2.5
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**CLASS II**

Particulate matter: PM<sub>2.5</sub>

Annual arithmetic mean	4
24-hr maximum	9

Particulate matter: PM<sub>10</sub>

Annual arithmetic mean	17
24-hour maximum	30

Sulfur dioxide:

Annual arithmetic mean	20
24-hour maximum	91
3-hour maximum	512

Nitrogen dioxide:

Annual arithmetic mean	25
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**CLASS III**

Particulate matter: PM<sub>2.5</sub>

Annual arithmetic mean	8
24-hr maximum	18

Particulate matter: PM<sub>10</sub>

Annual arithmetic mean	34
24-hour maximum	60

Sulfur dioxide:

Annual arithmetic mean	40
24-hour maximum	182
3-hour maximum	700

Nitrogen dioxide:

Annual arithmetic mean	50
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- B. The baseline concentration is that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline data.

- 1. The major source baseline date is:

- a. January 6, 1975, for sulfur dioxide and PM<sub>10</sub>.
- b. February 8, 1988, for nitrogen dioxide.
- c. October 20, 2010, for PM<sub>2.5</sub>.

- 2. The minor source baseline date shall be the earliest date after the trigger date on which a major source as defined in R18-2-401 or major modification subject to 40 CFR 52.21 or R18-2-406 submits a complete application under the relevant regulations.

- a. The trigger date is:

- i. August 7, 1977, for PM<sub>10</sub> and sulfur dioxide.
- ii. February 8, 1988, for nitrogen dioxide.
- iii. October 20, 2011, for PM<sub>2.5</sub>.

- b. Any minor source baseline date established originally for total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM-10 increments, except that the Department may rescind any such minor source baseline date where it can be shown, to the satisfaction of the Department, that the emissions increase from the major source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM-10 emissions.

- 3. A baseline concentration shall be determined for each pollutant for which there is a minor source baseline date and shall include both:

- a. The actual emissions representative of sources in existence on the minor source baseline date, except as provided in subsection (B)(4); and
- b. The allowable emissions of major sources as defined in R18-2-401 which commenced construction before

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- the major source baseline date but were not in operation by the applicable minor source baseline date.
4. The following shall not be included in the baseline concentration and shall affect the applicable maximum allowable increase:
    - a. Actual emissions from any major source as defined in R18-2-401 on which construction commenced after the major source baseline date; and
    - b. Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.
- C. The baseline date shall be established for each pollutant for which maximum allowable increases or other equivalent measures have been established if both:
1. The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 or R18-2-406; and
  2. In the case of a major source as defined in R18-2-401, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.
- D. The baseline area shall be the AQCR that contains the area, designated as attainment or unclassifiable under section 107(d)(1)(A)(ii) or (iii) of the Act, in which the major source as defined in R18-2-401 or major modification establishing the minor source baseline date would construct or would have an air quality impact for the pollutant for which the minor source baseline date is established, as follows: greater than or equal to 1 microgram per cubic meter (annual average) for sulfur dioxide, nitrogen dioxide or PM<sub>10</sub>; or greater than or equal to 0.3 microgram per cubic meter (annual average) for PM<sub>2.5</sub>.
1. Area redesignations under section 107(d)(1)(A)(ii) or (iii) of the Act that would redesignate a baseline area may not intersect or be smaller than the area of impact of any new major source as defined in R18-2-401 or a major modification which either:
    - a. Establishes a minor source baseline date, or
    - b. Is subject to either 40 CFR 52.21 or R18-2-406 and would be constructed in Arizona.
  2. Any baseline area established originally for total suspended particulates shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline area shall not remain in effect if the Department rescinds the corresponding minor source baseline date in accordance with subsection (B)(2)(b).
- E. The maximum allowable concentration of any air pollutant in any area to which subsection (A) applies shall not exceed a concentration for each pollutant equal to the concentration permitted under the national ambient air quality standards.
- F. For purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:
1. Concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of a natural gas curtailment order which is in effect under the provisions of sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, over the emissions from such sources before the effective date of such order;
  2. The concentration of such pollutant attributable to the increase in emissions from major and stationary sources which have converted from using gas by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act, 16 U.S.C. 792 - 825r, over the emissions from such sources before the effective date of the natural gas curtailment plan;
  3. Concentrations of PM<sub>10</sub> or PM<sub>2.5</sub> attributable to the increase in emissions from construction or other temporary emission related activities of a new or modified source;
  4. The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration; and
  5. Concentrations attributable to the temporary increase in emissions of sulfur dioxide, nitrogen oxides, PM<sub>2.5</sub>, or PM<sub>10</sub> from major sources as defined in R18-2-401 when the following conditions are met:
    - a. The permits issued to such sources specify the time period during which the temporary emissions increase of sulfur dioxide, nitrogen oxides, PM<sub>2.5</sub> or PM<sub>10</sub> would occur. Such time period shall not be renewable and shall not exceed two years.
    - b. The temporary emissions increase will not:
      - i. Impact any Class I area or any area where a maximum increase allowed by subsection (A) is known to be violated; or
      - ii. Cause or contribute to the violation of a national ambient air quality standard.
    - c. The operating permit issued to such sources specifies that, at the end of the time period described in subsection (F)(5)(a), the emissions levels from the sources would not exceed the levels occurring before the temporary emissions increase was approved.
  6. The exception granted by subsections (F)(1) and (2) with respect to maximum increases allowed under subsection (A) shall not apply more than five years after the effective date of the order or natural gas curtailment plan on which the exception is based.
- G. If the Director or the Administrator determines that the SIP is substantially inadequate to prevent significant deterioration or that an applicable maximum allowable increase as specified in subsection (A) is being violated, the SIP shall be revised to correct the inadequacy or the violation. The SIP shall be revised within 60 days of such a finding by the Director or within 60 days following notification by the Administrator, or by such later date as prescribed by the Administrator after consultation with the Director.
- H. The Director shall review the adequacy of the SIP on a periodic basis and within 60 days of such time as information becomes available that an applicable maximum allowable increase is being violated.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (5), subparagraph (d) (Supp. 80-2). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-217 renumbered without change as Section R18-2-217 (Supp. 87-3). Former Section R18-2-218 renumbered to R18-2-219, new Section R18-2-218 renumbered from R18-2-217(B) and amended effective September 26, 1990 (Supp. 90-3). Amended effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1).

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Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-219. Repealed**

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-218 repealed, new Section R9-3-218 adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-218 renumbered without change as Section R18-2-218 (Supp. 87-3). Former Section R18-2-219 renumbered to R18-2-220, new Section R18-2-219 renumbered from R18-2-218 and amended effective September 26, 1990 (Supp. 90-3). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-220. Air Pollution Emergency Episodes**

- A. Procedures shall be implemented by the Director in order to prevent the occurrence of ambient air pollutant concentrations which would cause significant harm to the health of persons, as specified in subsection (B)(4). The procedures and actions required for each stage are described in the Department’s “Procedures for Prevention of Emergency Episodes,” amended as of August 2018 (and no future edition), which is incorporated herein by reference and on file with the Department.
- B. The following stages are identified by air quality criteria in order to provide for sequential emissions reductions, public notification and increased Department monitoring and forecast responsibilities. The declaration of any stage, and the area of the state affected, shall be based on air quality measurements and meteorological analysis and forecast.

1. A Stage I air pollution alert shall be declared when any of the alert level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of alert level concentrations for the same pollutant during the subsequent 24-hour period. If, 48 hours after an alert has been initially declared, air pollution concentrations and meteorological conditions do not improve, the warning stage control actions shall be implemented but no warning shall be declared, unless air quality has deteriorated to the extent described in subsection (B)(2).
2. A Stage II air pollution warning shall be declared when any of the warning level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the warning level during the subsequent 24-hour period. If, 48 hours after a warning has been initially declared, air pollution concentrations and meteorological conditions do not improve, the emergency stage shall be declared and its control actions implemented.
3. A Stage III air pollution emergency shall be declared when any of the emergency level concentrations listed in subsection (B)(4) are exceeded at any monitoring site and when meteorological conditions indicate that there will be a continuance or recurrence of concentrations of the same pollutant exceeding the emergency level during the subsequent 24-hour period.
4. Summary of emergency episode and significant harm levels:

Pollutant	Averaging Time	Alert	Warning	Emergency	Significant Harm
Carbon monoxide (mg/m <sup>3</sup> )	1-hr	--	--	--	144
	4-hr	--	--	--	86.3
	8-hr	17	34	46	57.5
Nitrogen dioxide (µg/m <sup>3</sup> )	1-hr	1,130	2,260	3,000	3,750
	24-hr	282	565	750	938
Ozone (ppm)	1-hr	.2	.4	.5	.6
PM <sub>2.5</sub> (µg/m <sup>3</sup> )	24-hr	140.5	210.5	280.5	350.5
PM <sub>10</sub> (µg/m <sup>3</sup> )	24-hr	350	420	500	600
Sulfur dioxide (µg/m <sup>3</sup> )	24-hr	800	1,600	2,100	2,620

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B), paragraph (2) (Supp. 80-1). Editorial correction, subsection (A) (Supp. 80-2). Former Section R9-3-219 repealed, new Section R9-3-219 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-219 renumbered without change as Section R18-2-219 (Supp. 87-3). Section R18-2-220 renumbered from R18-2-219 and amended effective September 26, 1990 (Supp. 90-3). Section amended by final rulemaking at 25 A.A.R. 888, effective May 18, 2019 (Supp. 19-1).

**ARTICLE 3. PERMITS AND PERMIT REVISIONS**

**R18-2-301. Definitions**

The following definitions apply to this Article:

1. “Alternative method” means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to produce results adequate for the Director’s determination of compliance in accordance with R18-2-311(D).
2. “Billable permit action” means the issuance or denial of a new permit, significant permit revision, or minor permit revision, or the renewal of an existing permit.
3. “Capacity factor” means the ratio of the average load on a machine or equipment for the period of time considered to the capacity rating of the machine or equipment.
4. “CEM” means a continuous emission monitoring system as defined in R18-2-101.
5. “Complete” means, in reference to an application for a permit, permit revision or registration, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of a permit, permit revisions or registration processing does not preclude the Director from requesting or accepting any additional information.

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6. "Dispersion technique" means any technique which attempts to affect the concentration of a pollutant in the ambient air by any of the following:
- a. Using that portion of a stack which exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. This shall not include any of the following:
    - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
    - ii. The merging of exhaust gas streams under any of the following conditions:
      - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with such merged gas streams;
      - (2) After July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
      - (3) Before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the reviewing agency shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the reviewing agency shall deny credit for the effects of such merging in calculating the allowable emissions for the source.
    - iii. Smoke management in agricultural or silvicultural prescribed burning programs.
    - iv. Episodic restrictions on residential woodburning and open burning.
    - v. Techniques which increase final exhaust gas plume rise where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
7. "Emissions allowable under the permit" means a permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or an emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.
8. "Fossil fuel-fired steam generator" means a furnace or boiler used in the process of burning fossil fuel for the primary purpose of producing steam by heat transfer.
9. "Fuel oil" means Number 2 through Number 6 fuel oils as specified in ASTM D-396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D-2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D-975-90a (Specification for Diesel Fuel Oils).
10. "Itemized bill" means a breakdown of the permit processing time into the categories of pre-application activities, completeness review, substantive review, and public involvement activities, and within each category, a further breakdown by employee name.
11. "Major source threshold" means the lowest applicable emissions rate for a pollutant that would cause the source to be a major source at the particular time and location, under the definition of major source in R18-2-101.
12. "Maximum capacity to emit" means the maximum amount a source is capable of emitting under its physical and operational design without taking any limitations on operations or air pollution controls into account.
13. "Maximum capacity to emit with any elective limits" means the maximum amount a source is capable of emitting under its physical and operational design taking into account the effect on emissions of any elective limits included in the source's registration under R18-2-302.01(F).
14. "Minor NSR Modification" means any of the following changes that do not qualify as a major source or major modification:
- a. Any physical change in or change in the method of operation of an emission unit or a stationary source that either:
    - i. Increases the potential to emit of a regulated minor NSR pollutant by an amount greater than or equal to the permitting exemption thresholds, or
    - ii. Results in emissions of a regulated minor NSR pollutant not previously emitted by such emission unit or stationary source in an amount greater than or equal to the permitting exemption thresholds.
  - b. Construction of one or more new emissions units that have the potential to emit regulated minor NSR pollutants at an amount greater than or equal to the permitting exemption threshold.
  - c. A change covered by subsection (12)(a) or (b) of this Section constitutes a minor NSR modification regardless of whether there will be a net decrease in total source emissions or a net increase in total source emissions that is less than the permitting exemption threshold as a result of decreases in the potential to emit of other emission units at the same stationary source.
  - d. For the purposes of this subsection (the) following do not constitute a physical change or change in the method of operation:
    - i. A change consisting solely of the construction of, or changes to, a combination of emissions units qualifying as a categorically exempt activity.

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- ii. For a stationary source that is required to obtain a Class II permit under R18-2-302 and that is subject to source-wide emissions caps under R18-2-306.01 or R18-2-306.02, a change that will not result in the violation of the existing emissions cap for that regulated minor NSR pollutant.
- iii. Replacement of an emission unit by a unit with a potential to emit regulated minor NSR pollutants that is less than or equal to the potential to emit of the existing unit, provided the replacement does not cause an increase in emissions at other emission units at the stationary source. A unit installed under this provision is subject to any limits applicable to the unit it replaced.
- iv. Routine maintenance, repair, and replacement.
- v. Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. 792, or by reason of a natural gas curtailment plan under the Federal Power Act, 16 U.S.C. 792 to 825r.
- vi. Use of an alternative fuel by reason of an order or rule under Section 125 of the Act.
- vii. Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.
- viii. Use of an alternative fuel or raw material by a stationary source that either:
  - (1) The source was capable of accommodating before December 12, 1976, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter; or
  - (2) The source is approved to use under any permit issued under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
- ix. An increase in the hours of operation or in the production rate, unless the change would be prohibited under any federally enforceable permit condition established after December 12, 1976, under 40 CFR 52.21, or under Articles 3 or 4 of this Chapter.
- x. Any change in ownership at a stationary source.
- xi. The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, if the project complies with:
  - (1) The SIP, and
  - (2) Other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.
- xii. For electric utility steam generating units located in attainment and unclassifiable areas only, the installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, if the project does not result in an increase in the potential to emit any regulated pollutant emitted by the unit. This exemption applies on a pollutant-by-pollutant basis.
- xiii. For electric utility steam generating units located in attainment and unclassifiable areas only, the reactivation of a very clean coal-fired electric utility steam generating unit.
- e. For purposes of this subsection:
  - i. "Potential to emit" means the lower of a source's or emission unit's potential to emit or its allowable emissions.
  - ii. In determining potential to emit, the fugitive emissions of a stationary source shall not be considered unless the source belongs to a section 302(j) category.
  - iii. All of the roadways located at a stationary source constitute a single emissions unit.
- 15. "NAICS" means the five- or six-digit North American Industry Classification System-United States, 1997, number for industries used by the U.S. Department of Commerce.
- 16. "Permit processing time" means all time spent by Air Quality Division staff or consultants on tasks specifically related to the processing of an application for the issuance or renewal of a particular permit or permit revision, including time spent processing an application that is denied.
- 17. "Quantifiable" means, with respect to emissions, including the emissions involved in equivalent emission limits and emission trades, capable of being measured or otherwise determined in terms of quantity and assessed in terms of character. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, materials used in a process or production, modeling, or other reasonable measurement practices.
- 18. "Registration" means a registration under R18-2-302.01.
- 19. "Replicable" means, with respect to methods or procedures, sufficiently unambiguous that the same or equivalent results would be obtained by the application of the method or procedure by different users.
- 20. "Responsible official" means one of the following:
  - a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:
    - i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
    - ii. The delegation of authority to such representatives is approved in advance by the permitting authority;
  - b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;
  - c. For a municipality, state, federal, or other public agency: Either a principal executive officer or ranking elected official. For the purposes of this Article, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA); or
  - d. For affected sources:

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- i. The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
  - ii. The designated representative for any other purposes under 40 CFR 70.
21. "Screening model" means air dispersion modeling performed with screening techniques in accordance with 40 CFR 51, Appendix W as of June 30, 2017 (and no future amendments or additions).
  22. "Small source" means a source with a potential to emit, without controls, less than the rate defined as permitting exemption thresholds in R18-2-101, but required to obtain a permit solely because it is subject to a standard under 40 CFR 63.
  23. "Startup" means the setting in operation of a source for any purpose.
  24. "Synthetic minor" means a source with a permit that contains voluntarily accepted emissions limitations, controls, or other requirements (for example, a cap on production rates or hours of operation, or limits on the type of fuel) under R18-2-306.01 to reduce the potential to emit to a level below the major source threshold.

**Historical Note**

Former Section R18-2-301 renumbered to R18-2-302, new Section R18-2-301 adopted effective September 26, 1990 (Supp. 90-3). Correction to table in subsection (A)(13) (Supp. 93-1). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

**R18-2-302. Applicability; Registration; Classes of Permits**

- A. Except as otherwise provided in this Article, no person shall begin actual construction of, operate, or make a modification to any stationary source subject to regulation under this Article, without obtaining a registration, permit or permit revision from the Director.
- B. Class I and II permits and registrations shall be required as follows:
  1. A Class I permit shall be required for a person to begin actual construction of or operate any of the following:
    - a. Any major source,
    - b. Any solid waste incineration unit required to obtain a permit pursuant to Section 129(e) of the Act,
    - c. Any affected source, or
    - d. Any stationary source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
  2. Unless a Class I permit is required, a Class II permit shall be required for:
    - a. A person to begin actual construction of or operate any stationary source that emits, or has the maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
    - b. A person to make a physical or operational change to a stationary source that would cause the source to emit, or have the maximum capacity to emit with any elective limits, any regulated NSR pollutant in an amount greater than or equal to the significant level.
    - c. A person to begin actual construction of or modify a stationary source that otherwise would be subject to registration but that the Director has determined requires a permit under R18-2-302.01(C)(4) or (D).
3. Unless a Class I or II permit is required, registration shall be required for:
  - a. A person to begin actual construction of or operate any stationary source that emits or has the maximum capacity to emit any regulated minor NSR pollutant in an amount greater than or equal to a permitting exemption threshold.
  - b. A person to begin actual construction of or operate any stationary source subject to a standard under section 111 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
    - i. 40 CFR 60, Subpart AAA (Residential Wood Heaters).
    - ii. 40 CFR 60, Subpart IIII (Stationary Compression Ignition Internal Combustion Engines).
    - iii. 40 CFR 60, Subpart JJJJ (Stationary Spark Ignition Internal Combustion Engines).
    - iv. 40 CFR 60, Subpart QQQQ (Residential Hydronic Heaters and Forced-Air Furnaces).
  - c. A person to begin actual construction of or operate any stationary source, including an area source, subject to a standard under section 112 of the Act, except that a stationary source is not required to register solely because it is subject to any of the following standards:
    - i. 40 CFR 61.145.
    - ii. 40 CFR 63, Subpart ZZZZ (Reciprocating Internal Combustion Engines).
    - iii. 40 CFR 63, Subpart WWWW (Ethylene Oxide Sterilizers).
    - iv. 40 CFR 63, Subpart CCCCCC (Gasoline Distribution).
    - v. 40 CFR 63, Subpart HHHHHH (Paint Stripping and Miscellaneous Surface Coating Operations).
    - vi. 40 CFR 63, Subpart JJJJJJ (Industrial, Commercial, and Institutional Boilers Area Sources), published at 76 FR 15554 (March 21, 2011).
    - vii. A regulation or requirement under section 112(r) of the Act.
  - d. A physical or operational change to a source that would cause the source to emit or have the maximum capacity to emit any regulated minor NSR pollutant in an amount greater than or equal to the permitting exemption threshold.
- C. Notwithstanding subsections (A) and (B), the following stationary sources do not require a permit or registration unless the source is a major source, or unless operation without a permit would result in a violation of the Act:
  1. A stationary source that consists solely of a single categorically exempt activity plus any combination of trivial activities.
  2. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations"

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does not include equipment classified as a source that requires a permit under Title V of the Act, or that is subject to a standard under 40 CFR 60, 61 or 63.

- D.** No person may construct or reconstruct any major source of hazardous air pollutants, unless the Director determines that maximum achievable control technology emission limitation (MACT) for new sources under Section 112 of the Act will be met. If MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meaning prescribed in 40 CFR 63.41.
- E.** Elective limits or controls adopted under R18-2-302.01(F) shall not be considered in determining whether a source requires registration or a Class I permit but shall be considered in determining any of the following:
1. Whether the registration is subject to the public participation requirements of R18-2-330, as provided in R18-2-302.01(B)(3).
  2. Whether review for possible interference with attainment or maintenance of ambient standards is required under R18-2-302.01(C).
  3. Whether the source requires a Class II permit, as provided in subsection (B)(2)(a) or (b).
- F.** The fugitive emissions of a stationary source shall not be considered in determining whether the source requires a Class II permit under subsection (B)(2)(a) or (b) or a registration under subsection (B)(3)(a) or (d), unless the source belongs to a section 302(j) category. If a permit is required for a stationary source, the fugitive emissions of the source shall be subject to all of the requirements of this Article.
- G.** Notwithstanding subsections (A) and (B) of this Section, a person may begin actual construction, but not operation, of a source requiring a Class I permit or Class I permit revision upon the Director's issuance of the proposed final permit or proposed final permit revision.

**Historical Note**

Amended effective August 7, 1975 (Supp. 75-1).  
 Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Amended effective April 12, 1977 (Supp. 77-2).  
 Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-301 repealed, new Section R9-3-301 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended effective May 28, 1982 (Supp. 82-3). Amended subsections (B) and (C) effective September 22, 1983 (Supp. 83-5). Amended subsection (B), paragraph (3) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-301 renumbered without change as Section R18-2-301 (Supp. 87-3). Former Section R18-2-302 renumbered to R18-2-302.01, new Section R18-2-302 renumbered from R18-2-301 and amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-302.01. Source Registration Requirements**

- A.** Application. An application for registration shall be submitted on the form specified by the Director and shall include the following information:
1. The name of the applicant.
  2. The physical location of the source, including the street address, city, county, zip code and latitude and longitude coordinates.
  3. The source's maximum capacity to emit with any elective limits each regulated minor NSR pollutant.
  4. Identification of any elective limits or controls adopted under subsection (F).
  5. In the case of a modification, each increase in the source's maximum capacity to emit with any elective limits that exceeds the applicable threshold in subsection (G)(1)(a).
  6. Identification of the method used to determine the maximum capacity to emit under R18-2-302(B)(3)(a), a change in the maximum capacity to emit under R18-2-302(B)(3)(d), or the maximum capacity to emit with any elective limits under subsection (G)(1)(a) of this Section.
  7. Process information for the source, including a list of emission units, design capacity, operations schedule, and identification of emissions control devices.
- B.** Registration Processing Procedures.
1. The Department shall complete a review of a registration application for administrative completeness within 30 calendar days, calculated in accordance with A.A.C. R18-1-503, after its receipt.
  2. The Department shall complete a substantive review and take final action on a registration application within 60 calendar days if no hearing is requested, and 90 calendar days if a hearing is requested, calculated in accordance with A.A.C. R18-1-504, after the application is administratively complete.
  3. Except as provided in subsection (B)(5), a registration for construction of a source shall be subject to the public notice and participation requirements of R18-2-330. The materials relevant to the registration decision made available to the public under R18-2-330(D) shall include any determination made or modeling conducted by the Director under subsection (C).
  4. The Department shall also send a copy of the notice required by subsection (B)(3) to the administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the registration will be located. The notice shall also be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, Subpart I.
  5. A registration for construction of a source shall not be subject to subsection (B)(3) or (4), if the source's maximum capacity to emit with any elective limits each regulated minor NSR pollutant is less than the applicable permitting exemption threshold.
- C.** Review for National Ambient Air Quality Standards Compliance; Requirement to Obtain a Permit.
1. The Director shall review each application for registration of a source with the maximum capacity to emit with any elective limits any regulated minor NSR pollutant in an amount equal to or greater than the permitting exemption threshold. The purpose of the review shall be to determine whether the new or modified source may interfere with attainment or maintenance of a national ambient air quality standard in any area. In making the determina-

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tion required by this subsection, the Director shall take into account the following factors:

- a. The source's emission rates, including fugitive emission rates, taking into account any elective limits or controls adopted under subsection (F).
  - b. The location of emission units within the facility and their proximity to the ambient air.
  - c. The terrain in which the source is or will be located.
  - d. The source type.
  - e. The location and emissions of nearby sources.
  - f. Background concentrations of regulated minor NSR pollutants.
2. The Director may undertake the review specified in subsection (C)(1) for a source with the maximum capacity to emit with any elective limits regulated minor NSR pollutants in an amount less than the permitting exemption threshold.
  3. If the Director determines under subsection (C)(1) or (C)(2) that a source's emissions may interfere with attainment or maintenance of a national ambient air quality standard, the Director shall perform a screening model run for each regulated minor NSR pollutant for which that determination has been made.
  4. If the Director determines, based on performance of the screening model pursuant to subsection (C)(3), that a source's emissions, taking into account any elective limits or controls adopted under subsection (F), will interfere with attainment or maintenance of a national ambient air quality standard, the Director shall deny the application for registration. Notwithstanding R18-2-302(B)(3), the owner or operator of the source shall be required to obtain a permit under R18-2-302 and shall comply with R18-2-334 before beginning actual construction of the source or modification.
- D. Requirement to Obtain a Permit.** Notwithstanding R18-2-302(B)(3)(b) and (c), the Director shall deny an application for registration for a source subject to a standard under section 111 or 112 of the Act and require the owner or operator to obtain a permit under R18-2-302, if the Director determines based on the following factors that the requirement to obtain a permit is warranted:
1. The size and complexity of the source.
  2. The complexity of the section 111 or 112 standard applicable to the source.
  3. The public health or environmental risks posed by the pollutants subject to regulation under the section 111 or 112 standard.
- E. Registration Contents.** A registration shall contain the following elements:
1. Enforceable emission limitations and standards, including operational requirements and limitations, that ensure compliance with all applicable SIP requirements at the time of issuance and any testing, monitoring, recordkeeping and reporting obligations imposed by the applicable requirement or by R18-2-312.
  2. Any elective limits or controls and associated operating, maintenance, monitoring and recordkeeping requirements adopted pursuant to subsection (F).
  3. A requirement to retain any records required by the registration at the source for at least three years in a form that is suitable for expeditious inspection and review.
  4. For any source that has adopted elective limits or controls under subsection (F), a requirement to submit an annual compliance report on the form provided by the Director in the registration.
- F. Elective Limits or Controls.** The owner or operator of a source requiring registration may elect to include any of the following emission limitations in the registration, provided the Department approves the limitation and the registration also includes the operating, maintenance, monitoring, and recordkeeping requirements specified below for the limitation.
1. A limitation on the hours of operation of any process or combination of processes.
    - a. The registration shall express the limitation in terms of hours per rolling 12-month period and shall specify the process or combination of processes subject to the limitation.
    - b. The owner or operator shall maintain a log or readily available business records showing actual operating hours through the preceding operating day for the process or processes subject to the limitation.
  2. A limitation on the production rate for any process or combination of processes.
    - a. The registration shall express the limitation in terms of an appropriate unit of mass or production per rolling 12-month period and shall specify the process or combination of processes subject to the limitation.
    - b. The owner or operator shall maintain a log or readily available business records showing the actual production rate through the preceding operating day for the process or processes subject to the limitation. The owner or operator shall update the log or business records at least once per operating day.
  3. A requirement to operate a fabric filter for the control of particulate matter emissions.
    - a. The owner or operator shall operate the fabric filter at all times that the emission unit controlled by the fabric filter is operated.
    - b. The owner or operator shall inspect the fabric filter at least once per month for tears and leaks and shall promptly repair any tears or leaks identified. If the fabric filter is subject to a limit on the opacity of emissions, the inspection shall include an opacity observation in accordance with the applicable reference method.
    - c. The owner or operator shall operate and maintain the fabric filter in substantial compliance with the manufacturer's operation and maintenance recommendations.
    - d. The owner or operator shall keep a log or readily available business records of the inspections required by subsection (F)(3)(b) and the maintenance activities required by subsection (F)(3)(c). The owner or operator shall update the log or business records within 24 hours after an inspection or maintenance activity is performed.
    - e. The registration shall identify the fabric filters and processes subject to this requirement.
  4. Limitations on the total amount of VOC or hazardous air pollutants in solvents, coatings or other process materials used at the registered source.
    - a. The registration shall identify the pollutants and processes covered by the limitations and shall express the limitations in terms of pounds per rolling 12-month period.
    - b. The owner or operator shall maintain a log or readily available business records showing the concentration of each covered VOC or hazardous air pollutant in each VOC or hazardous air pollutant containing material used at the source. The owner or operator shall update the records whenever the concentration

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in any material changes or a new material is used. The presence at the source of a current material safety data sheet for a material used without dilution or other alteration satisfies this requirement.

- c. The owner or operator shall maintain a spreadsheet or database to record the amount of each material containing a covered VOC or hazardous air pollutant used. The spreadsheet or database shall calculate the total pounds of the VOC or hazardous air pollutant used by multiplying the concentration of VOC or hazardous air pollutant in a material by the amount of material used and shall employ appropriate units of measurement and conversion factors. The owner or operator shall update the spreadsheet or database at least once per operating day.

**G. Revised Registrations.**

1. Unless a Class II permit is required under R18-2-302(B)(2)(b), the owner or operator of a registered source shall file a revised registration on the occurrence of any of the following:
  - a. A modification to the source that would result in an increase in the source's maximum capacity to emit with any elective limits exceeding any of the following amounts:
    - i. 2.5 tons per year for NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub>, PM<sub>2.5</sub>, VOC or CO.
    - ii. 0.3 tons per year for lead.
  - b. Relocation of a portable source.
  - c. The transfer of the source to a new owner.
2. The requirements of subsection (B) shall not apply to a revised registration. The owner or operator may begin actual construction and operation of the modified, relocated or transferred source on filing the revised registration.

**H. Registration Term.**

1. A source's registration shall expire five years after the date of issuance of the last registration for the source or any modification to the source.
2. A source shall submit an application for renewal of a registration not later than six months before expiration of the registration's term.
3. If a source submits a timely and complete application for renewal of a registration, the source's authorization to operate under its existing registration shall continue until the Director takes final action on the application.
4. The Director may terminate a registration under R18-2-321(C). If the Director terminates a registration under R18-2-321(C)(3), the owner or operator shall be required to apply for a permit for the source under R18-2-302.

- I. Issuance of a registration shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

**Historical Note**

Amended effective August 7, 1975 (Supp. 75-1); Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective October 2, 1979 (Supp. 79-5). Former Section R9-3-302 repealed, new Section R9-3-302 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-302 renumbered without change as Section R18-2-302 (Supp. 87-3). Section R18-2-302.01 renumbered from Section R18-2-302 and amended effective September 26, 1990 (Supp. 90-3). Section repealed effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23

A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

**R18-2-303. Transition from Installation and Operating Permit Program to Unitary Permit Program; Registration Transition; Minor NSR Transition**

- A. An installation or operating permit issued before September 1, 1993, and the authority to operate, as provided in Laws 1992, Ch. 299, § 65, continues in effect until the installation or operating permit is terminated, or until the Director issues or denies a Class I or Class II permit to the source, whichever is earlier.
- B. The terms and conditions of installation permits issued before September 1, 1993, or in permits or permit revisions issued under R18-2-302 and authorizing the construction or modification of a stationary source, remain federal applicable requirements unless modified or revoked by the Director.
- C. All sources in existence on September 1, 2012, requiring a registration shall provide notice to the Director by no later than December 1, 2012, on a form provided by the Director.
- D. All sources requiring a registration that are in existence on the date R18-2-302.01 becomes effective under R18-2-302.01(I) may submit applications for registration at any time after R18-2-302.01 is effective and shall submit an application no later than 180 days after receipt of written notice from the Director that an application is required.
- E. Sources in existence on December 2, 2015 are not subject to R18-2-334, unless the source undertakes a minor NSR modification after that date. Notwithstanding any other provision of this Chapter, R18-2-334 shall apply only to applications for permits or permit revisions filed after December 2, 2015.

**Historical Note**

Amended effective August 7, 1975 (Supp. 75-1). Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-303 repealed, new Section R9-3-303 adopted effective October 2, 1979 (Supp. 79-5). Amended effective May 28, 1982 (Supp. 82-3). Amended subsection (D), paragraph (1) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-303 renumbered without change as Section R18-2-303 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-304. Permit Application Processing Procedures**

- A. Unless otherwise noted, this Section applies to each source requiring a Class I or II permit or permit revision.
- B. Standard Application Form and Required Information. To apply for a permit required by this Chapter, applicants shall complete the applicable standard application form provided by the Director and supply all information required by the form's filing instructions. The application forms and filing instructions for Class I Permits shall at a minimum require submission of the following elements:
  1. Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.
  2. A description of the source's processes and products (by Standard Industrial Classification (SIC) Code), including

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- those associated with any proposed alternative operating scenarios (AOS) identified by the source.
3. The following emission-related information:
    - a. All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. A permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except as otherwise provided in R18-2-304(F)(8). The Director shall require additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under R18-2-326.
    - b. Identification and description of all points of emissions described in subsection (B)(3)(a) of this Section in sufficient detail to establish the basis for fees and applicability of requirements.
    - c. Emissions rate in tons per year (tpy) and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method. For emissions units subject to an annual emissions cap, tpy can be reported as part of the aggregate emissions associated with the cap, except where more specific information is needed, including where necessary to determine and/or assure compliance with an applicable requirement.
    - d. The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.
    - e. Identification and description of air pollution control equipment and compliance monitoring devices or activities.
    - f. Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the Class I source.
    - g. Other information required by any applicable requirement (including information related to stack height limitations in R18-2-332).
    - h. Calculations on which the information in subsections (B)(3)(a) through (g) of this Section is based.
  4. The following air pollution control requirements:
    - a. Citation and description of all applicable requirements, and
    - b. Description of or reference to any applicable test method for determining compliance with each applicable requirement.
  5. Other specific information that may be necessary to implement and enforce other applicable requirements or to determine the applicability of such requirements.
  6. An explanation of any proposed exemptions from otherwise applicable requirements.
  7. Additional information as determined to be necessary by the Director to define proposed AOS identified by the source pursuant to R18-2-306(A)(11) or to define permit terms and conditions implementing any AOS under R18-2-306(A)(11) or implementing R18-2-317, R18-2-306(A)(12), R18-2-306(A)(14), or R18-2-306.02. The permit application shall include documentation demonstrating that the source has obtained all authorizations required under the applicable requirements relevant to any proposed AOS, or a certification that the source has submitted all relevant materials to the Director for obtaining such authorizations.
  8. A compliance plan for all Class I sources that contains all of the following:
    - a. A description of the compliance status of the source with respect to all applicable requirements.
    - b. A description as follows:
      - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
      - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
      - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.
      - iv. For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis.
    - c. A compliance schedule as follows:
      - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.
      - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.
      - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.
      - iv. For applicable requirements associated with a proposed AOS, a statement that the source will meet such requirements upon implementation of the AOS. If a proposed AOS would implicate an applicable requirement that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet, in a timely manner, applicable requirements that become effective during the permit term will satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

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- d. A schedule for submission of certified progress reports no less frequently than every 6 months for sources required to have a schedule of compliance to remedy a violation.
  - e. The compliance plan content requirements specified in subsection (B)(8) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under title IV of the Act with regard to the schedule and methods the source will use to achieve compliance with the acid rain emissions limitations.
9. Requirements for compliance certification, including the following:
- a. A certification of compliance with all applicable requirements by a responsible official, which shall include:
    - i. Identification of the applicable requirement that is the basis of the certification;
    - ii. The method used for determining the compliance status of the source, including a description of monitoring, recordkeeping, and reporting requirements and test methods;
    - iii. The compliance status; and
    - iv. Such other facts as the Director may require;
  - b. A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the permitting authority;
  - c. A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act; and
  - d. A certification of truth, accuracy, and completeness pursuant to R18-2-304(I).
10. The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under title IV of the act.
- C. The Director, either upon the Director's own initiative or on the request of a permit applicant, may waive a requirement that specific information or data be submitted in the application for a Class II permit for a particular source or category of sources if the Director determines that the information or data would be unnecessary to determine all of the following:
- 1. The applicable requirements to which the source may be subject;
  - 2. That the source is so designed, controlled, or equipped with such air pollution control equipment that it may be expected to operate without emitting or without causing to be emitted air contaminants in violation of the provisions of A.R.S. Title 49, Chapter 3, Article 2 and this Chapter;
  - 3. The fees to which the source may be subject; and
  - 4. A proposed emission limitation, control, or other requirement that meets the requirements of R18-2-306.01 or R18-2-306.02.
- D. A timely application is:
- 1. For a source, that becomes subject to the permit program as a result of a change in regulation and not as a result of construction or a physical or operational change, one that is submitted within 12 months after the source becomes subject to the permit program.
  - 2. For purposes of permit renewal, a timely application is one that is submitted at least six months, but not more than 18 months, prior to the date of permit expiration.
  - 3. Any source under R18-2-326(A)(3) which becomes subject to a standard promulgated by the Administrator pursuant to section 112(d) of the Act shall, within 12 months of the date on which the standard is promulgated, submit an application for a permit revision demonstrating how the source will comply with the standard.
- E. If an applicable implementation plan allows the determination of an alternative emission limit, a source may, in its application, propose an emission limit that is equivalent to the emission limit otherwise applicable to the source under the applicable implementation plan. The source shall also demonstrate that the equivalent limit is quantifiable, accountable, enforceable, and subject to replicable compliance determination procedures.
- F. A complete application shall comply with all of the following:
- 1. To be complete, an application shall provide all information required by subsection (B) (standard application form section). An application for permit revision only need supply information related to the proposed change, unless the source's proposed permit revision will change the permit from a Class II permit to a Class I permit. A responsible official shall certify the submitted information consistent with subsection (I) (Certification of Truth, Accuracy, and Completeness).
  - 2. An application for a new permit or permit revision shall contain an assessment of the applicability of the requirements of Article 4 of this Chapter. If the applicant determines that the proposed new source is a major source as defined in R18-2-401, or the proposed permit revision constitutes a major modification as defined in R18-2-101, then the application shall comply with all applicable requirements of Article 4.
  - 3. An application for a new permit or permit revision shall contain an assessment of the applicability of Minor New Source Review requirements in R18-2-334. If the applicant determines that the proposed new source is subject to R18-2-334, or the proposed permit revision constitutes a Minor NSR Modification, then the application shall comply with all applicable requirements of R18-2-334.
  - 4. Except for proposed new major sources or major modifications subject to the requirements of Article 4 of this Chapter, an application for a new permit, a permit revision, or a permit renewal shall be deemed to be complete unless, within 60 days of receipt of the application, the Director notifies the applicant by certified mail that the application is not complete.
  - 5. If a source wishes to voluntarily enter into an emissions limitation, control, or other requirement pursuant to R18-2-306.01, the source shall describe that emissions limitation, control, or other requirement in its application, along with proposed associated monitoring, recordkeeping, and reporting requirements necessary to demonstrate that the emissions limitation, control, or other requirement is permanent, quantifiable, and otherwise enforceable as a practical matter.
  - 6. If, while processing an application that has been determined or deemed to be complete, the Director determines that additional information is necessary to evaluate or take final action on that application, the Director may request such information in writing and set a reasonable deadline for a response. Except for minor permit revisions as set forth in R18-2-319, a source's ability to continue operating without a permit, as set forth in

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subsection (K), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the Director.

7. The completeness determination shall not apply to revisions processed through the minor permit revision process.
  8. Activities which are insignificant pursuant to the definition of insignificant activities in R18-2-101 shall be listed in the application. Except as necessary to complete the assessment required by subsection (F)(2) or (3), the application need not provide emissions data regarding insignificant activities. If the Director determines that an activity listed as insignificant does not meet the requirements of the definition of insignificant activities in R18-2-101 or that emissions data for the activity is required to complete the assessment required by subsection (F)(2) or (3), the Director shall notify the applicant in writing and specify additional information required.
  9. If a permit applicant requests terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements, the permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable.
  10. The Director is not in disagreement with a notice of confidentiality submitted with the application pursuant to A.R.S. § 49-432.
- G.** A source applying for a Class I permit that has submitted information with an application under a claim of confidentiality pursuant to A.R.S. § 49-432 and R18-2-305 shall submit a copy of such information directly to the Administrator.
- H.** Duty to Supplement or Correct Application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a proposed permit.
- I.** Certification of Truth, Accuracy, and Completeness. Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Article shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- J.** Action on Application.
1. The Director shall issue or deny each permit according to the provisions of A.R.S. § 49-427. The Director may issue a permit with a compliance schedule for a source that is not in compliance with all applicable requirements at the time of permit issuance.
  2. In addition, a permit may be issued, revised, or renewed only if all of the following conditions have been met:
    - a. The application received by the Director for a permit, permit revision, or permit renewal shall be complete according to subsection (F).
    - b. Except for revisions qualifying as administrative or minor under R18-2-318 and R18-2-319, all of the requirements for public notice and participation under R18-2-330 shall have been met.
- K.** Requirement for a Permit. Except as noted under the provisions in R18-2-317 and R18-2-319, no source may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued pursuant to this Chapter. However, if a source under R18-2-326(A)(3) submits a timely and complete application for continued operation under a permit revision or renewal, the source's failure to have a permit is not a violation of this Article until the Director takes final action on the application. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the Director, any additional information identified as being needed to process the application. This subsection does not affect a source's obligation to obtain a permit revision before making a modification to the source.
- c. For Class I permits, the Director shall have complied with the requirements of R18-2-307 for notifying and responding to affected states, and if applicable, other notification requirements of R18-2-402(D)(2) and R18-2-410(C)(2).
  - d. For Class I and II permits, the conditions of the permit shall require compliance with all applicable requirements.
  - e. For permits for which an application is required to be submitted to the Administrator under R18-2-307(A), and to which the Administrator has properly objected to its issuance in writing within 45 days of receipt of the proposed final permit and all necessary supporting information from the Department, the Director has revised and submitted a proposed final permit in response to the objection and EPA has not objected to this proposed final permit within 45 days of receipt.
  - f. For permits to which the Administrator has objected to issuance pursuant to a petition filed under 40 CFR 70.8(d), the Administrator's objection has been resolved.
  - g. For a Class II permit that contains voluntary emission limitations, controls, or other requirements established pursuant to R18-2-306.01, the Director shall have complied with the requirement of R18-2-306.01(C) to provide the Administrator with a copy of the proposed permit.
3. If the Director denies a permit under this Section, a notice shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the denial and a statement that the permit applicant is entitled to a hearing.
  4. The Director shall provide a statement that sets forth the legal and factual basis for the proposed permit conditions including references to the applicable statutory or regulatory provisions. The Director shall send this statement to any person who requests it and, for Class I permits, to the Administrator.
  5. Priority shall be given by the Director to taking action on applications for construction or modification submitted pursuant to Title I, Parts C (Prevention of Significant Deterioration) and D (New Source Review) of the Act.

**Historical Note**

Amended effective August 7, 1975 (Supp. 75-1). Former Section R9-3-304 repealed, new Section R9-3-304 formerly Section R9-3-305 renumbered and amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-

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304 repealed, new Section R9-3-304 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-304 repealed, new Section R9-3-304 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-304 renumbered without change as Section R18-2-304 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). The reference to R18-2-101(54) in subsection (E)(8) corrected to reference R18-2-101(57) (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, February 1, 2020 (Supp. 19-4).

**R18-2-305. Public Records; Confidentiality**

- A. The Director shall make all permits, including all elements required to be in the permit pursuant to R18-2-306, available to the public. No permit shall be issued unless the information required by R18-2-306 is present in the permit.
- B. A notice of confidentiality pursuant to A.R.S. § 49-432(C) shall:
  1. Precisely identify the information in the documents submitted which is considered confidential.
  2. Contain sufficient supporting information to allow the Director to evaluate whether such information satisfies the requirements related to trade secrets or, if applicable, how the information, if disclosed, is likely to cause substantial harm to the person's competitive position.
- C. Within 30 days of receipt of a notice of confidentiality that complies with subsection (B) above, the Director shall make a determination as to whether the information satisfies the requirements for trade secret or competitive position pursuant to A.R.S. § 49-432(C)(1) and so notify the applicant in writing. If the Director agrees with the applicant that the information covered by the notice of confidentiality satisfies the statutory requirements, the Director shall include a notice in the file for the permit or permit application that certain information has been considered confidential.
- D. If the Director takes action pursuant to A.R.S. § 49-432(D) and obtains a final order authorizing disclosure, the Director shall place the information in the public file and shall notify any person who has requested disclosure. If the court determines that the information is not subject to disclosure, the Director shall provide the notice specified in subsection (C) above.

**Historical Note**

Amended effective August 7, 1975 (Supp. 75-1). Amended as an emergency effective December 15, 1975 (Supp. 75-2). Amended effective May 10, 1976 (Supp. 76-3). Former Section R9-3-306 renumbered as Section R9-3-305 effective August 6, 1976. References changed to conform (Supp. 76-4). Amended effective April 12, 1977 (Supp. 77-2). Amended effective March 24, 1978 (Supp. 78-2). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-305 repealed, new Section R9-3-305 adopted effective May 28, 1982 (Supp. 82-3). Former Section R9-3-305 renumbered without change as R18-2-

305 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-306. Permit Contents**

- A. Each permit issued by the Director shall include the following elements:
  1. The date of issuance and the permit term.
  2. Enforceable emission limitations and standards, including operational requirements and limitations that ensure compliance with all applicable requirements at the time of issuance and operational requirements and limitations that have been voluntarily accepted under R18-2-306.01.
    - a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
    - b. The permit shall state that, if an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.
    - c. Any permit containing an equivalency demonstration for an alternative emission limit submitted under R18-2-304(E) shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
    - d. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.
  3. Each permit shall contain the following requirements with respect to monitoring:
    - a. All monitoring and analysis procedures or test methods required under applicable monitoring and testing requirements, including:
      - i. Monitoring and analysis procedures or test methods under 40 CFR 64;
      - ii. Other procedures and methods promulgated under sections 114(a)(3) or 504(b) of the Act; and
      - iii. Monitoring and analysis procedures or test methods required under R18-2-306.01.
    - b. 40 CFR 64 as adopted July 1, 1998, is incorporated by reference and on file with the Department and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. If more than one monitoring or testing requirement applies, the permit may specify a streamlined set of monitoring or testing provisions if the specified monitoring or testing is adequate to assure compliance at least to the same extent as the monitoring or testing applicable requirements not included in the permit as a result of such streamlining;
    - c. If the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported under subsection (A)(4). The monitoring requirements shall ensure use of terms, test methods, units, averaging

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- periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required under R18-2-306.01. Recordkeeping provisions may be sufficient to meet the requirements of this subsection; and
- d. As necessary, requirements concerning the use, maintenance, and, if appropriate, installation of monitoring equipment or methods.
4. The permit shall incorporate all applicable recordkeeping requirements including recordkeeping requirements established under R18-2-306.01, for the following:
- a. Records of required monitoring information that include the following:
- i. The date, place as defined in the permit, and time of sampling or measurement;
  - ii. The date any analyses was performed;
  - iii. The name of the company or entity that performed the analysis;
  - iv. A description of the analytical technique or method used;
  - v. The results of any analysis; and
  - vi. The operating conditions existing at the time of sampling or measurement;
- b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation and copies of all reports required by the permit.
5. The permit shall incorporate all applicable reporting requirements including reporting requirements established under R18-2-306.01 and require the following:
- a. Submittal of reports of any required monitoring. All instances of deviations from permit requirements shall be clearly identified in the reports. All required reports shall be certified by a responsible official consistent with R18-2-304(I) and R18-2-309(A)(5) and shall be submitted with the following frequency:
- i. For a Class I permit, at least once every six months;
  - ii. For a Class II permit, at least once per year.
- b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of the deviations, and any corrective actions or preventive measures taken. Where the applicable requirement contains a definition of prompt or otherwise specifies a timeframe for reporting deviations, that definition or timeframe shall govern. Where the applicable requirement does not address the timeframe for reporting deviations, the permittee shall submit reports of deviations in compliance with the following schedule:
- i. Notice that complies with timeframe in R18-2-310.01(A) is prompt for deviations that constitute excess emissions;
  - ii. Except as otherwise provided in the permit, notice that complies with subsection (A)(5)(a) is prompt for all other types of deviation.
6. A permit condition prohibiting emissions exceeding any allowances the source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.
- a. A permit revision is not required for increases in emissions that are authorized by allowances acquired under the acid rain program, if the increases do not require a permit revision under any other applicable requirement.
- b. A limit shall not be placed on the number of allowances held by the source. The source shall not, however, use allowances as a defense to noncompliance with any other applicable requirement.
- c. Any allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
- d. Any permit issued under the requirements of this Chapter and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:
- i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owner or operator of the unit or the designated representative of the owner or operator,
  - ii. Exceedances of applicable emission rates,
  - iii. Use of any allowance before the year for which it is allocated, and
  - iv. Contravention of any other provision of the permit.
7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portion of the permit.
8. Provisions stating the following:
- a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes A.R.S. Title 49, Chapter 3, and the air quality rules, 18 A.A.C. 2. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforceable requirement in a permit is a violation of the Act.
- b. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.
- c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- d. The permit does not convey any property rights of any sort, or any exclusive privilege to the permit holder.
- e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. Upon the Director's request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of the records directly to the Administrator along with a claim of confidentiality.
- f. For any major source operating in a nonattainment area for all pollutants for which the source is classified as a major source, the source shall comply with reasonably available control technology.

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9. A provision to ensure that the source pays fees to the Director under A.R.S. § 49-426(E), R18-2-326, and R18-2-511.
10. A provision stating that a permit revision shall not be required under any approved economic incentives, marketable permits, emissions trading, and other similar programs or processes for changes provided for in the permit.
11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. The terms and conditions shall:
  - a. Require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
  - b. Extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
  - c. Ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.
12. Terms and conditions, if the permit applicant requests them, and as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading the increases and decreases without a case-by-case approval of each emissions trade. The terms and conditions:
  - a. Shall include all terms required under subsections (A) and (C) to determine compliance;
  - b. Shall not extend the permit shield in subsection (D) to all terms and conditions that allow the increases and decreases in emissions;
  - c. Shall not include trading that involves emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
  - d. Shall meet all applicable requirements and requirements of this Chapter.
13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If the terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
14. Upon request of a permit applicant, the Director shall issue a permit that contains terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this subsection (shall) not include modifications under any provision of Title I of the Act and shall not exceed emissions allowable under the permit. The terms and conditions shall provide, for Class I sources, for notice that conforms to R18-2-317(D) and (E), and for Class II sources, for logging that conforms to R18-2-317.02(B)(5). In addition, the notices for Class I and Class II sources shall describe how the increases and decreases in emissions will comply with the terms and conditions of the permit.
15. Other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2, and the rules adopted in 18 A.A.C. 2.
  - B. Federally-enforceable Requirements.**
    1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:
      - a. Except as provided in subsection (B)(2), all terms and conditions in a Class I permit, including any provision designed to limit a source's potential to emit;
      - b. Terms or conditions in a Class II permit setting forth federal applicable requirements; and
      - c. Terms and conditions in any permit entered into voluntarily under R18-2-306.01, as follows:
        - i. Emissions limitations, controls, or other requirements; and
        - ii. Monitoring, recordkeeping, and reporting requirements associated with the emissions limitations, controls, or other requirements in subsection (B)(1)(c)(i).
    2. Notwithstanding subsection (B)(1)(a), the Director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.
  - C.** Each permit shall contain a compliance plan as specified in R18-2-309.
  - D.** Each permit shall include the applicable permit shield provisions under R18-2-325.
  - E. Emergency provision.**
    1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, that requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
    2. An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of subsection (E)(3) are met.
    3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
      - a. An emergency occurred and the permittee can identify the cause or causes of the emergency;
      - b. At the time of the emergency the permitted facility was being properly operated;
      - c. During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and
      - d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile, or hand delivery within two working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the

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emergency, any steps taken to mitigate emissions, and corrective action taken.

4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
  5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.
- F.** A Class I permit issued to a major source shall require that revisions be made under R18-2-321 to incorporate additional applicable requirements adopted by the Administrator under the Act that become applicable to a source with a permit with a remaining permit term of three or more years. A revision shall not be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of the standards and regulations. Any permit revision required under this subsection (shall) comply with R18-2-322 for permit renewal and shall reset the five-year permit term.

**Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976. Reference changed to conform (Supp. 76-4). Former Section R9-3-306 repealed, new Section R9-3-306 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 28, 1984 (Supp. 84-5). Former Section R9-3-306 renumbered without change as R18-2-306 (Supp. 87-3). Amended subsection (I) effective December 1, 1988 (Supp. 88-4). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-306.01. Permits Containing Voluntarily Accepted Emission Limitations and Standards**

- A.** A source may voluntarily propose in its application, and accept in its permit, emissions limitations, controls, or other requirements that are permanent, quantifiable, and otherwise enforceable as a practical matter in order to avoid classification as a source that requires a Class I permit or to avoid one or more other applicable requirements. For the purposes of this Section, "enforceable as a practical matter" means that specific means to assess compliance with an emissions limitation, control, or other requirement are provided for in the permit in a manner that allows compliance to be readily determined by an inspection of records and reports.
- B.** In order for a source to obtain a permit containing voluntarily accepted emissions limitations, controls, or other requirements, the source shall demonstrate all of the following in its permit application:
1. The emissions limitations, controls, or other requirements to be imposed for the purpose of avoiding an applicable requirement are at least as stringent as the emissions limitations, controls, or other requirements that would otherwise be applicable to that source, including those that originate in an applicable implementation plan; and the

permit does not waive, or make less stringent, any limitations or requirements contained in or issued pursuant to an applicable implementation plan, or that are otherwise federally enforceable.

2. All voluntarily accepted emissions limitations, controls, or other requirements will be permanent, quantifiable, and otherwise enforceable as a practical matter.
- C.** At the same time as notice of proposed issuance is first published pursuant to A.R.S. § 49-426(D), the Director shall send a copy of any Class II permit proposed to be issued pursuant to this Section to the Administrator for review during the comment period described in the notice pursuant to R18-2-330(C)(3).
- D.** The Director shall send a copy of each final permit issued pursuant to this Section to the Administrator.

**Historical Note**

Adopted effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-306.02. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2982, effective September 15, 2016 (Supp. 16-3).

**R18-2-307. Permit Review by the EPA and Affected States**

- A.** Except as provided in R18-2-304(G) and as waived by the Administrator, for each Class I permit, a copy of each of the following shall be provided to the Administrator as follows:
1. The applicant shall provide a complete copy of the application including any attachments, compliance plans, and other information required by R18-2-304(F) at the time of submittal of the application to the Director.
  2. The Director shall provide the proposed final permit after public and affected state review.
  3. The Director shall provide the final permit at the time of issuance.
- B.** The Director shall keep all records associated with all permits for a minimum of five years from issuance.
- C.** No permit for which an application is required to be submitted to the Administrator under subsection (A) shall be issued if the Administrator properly objects to its issuance in writing within 45 days of receipt of the proposed final permit from the Department and all necessary supporting information.
- D.** Review by Affected States.
1. For each Class I permit, the Director shall provide notice of each proposed permit to any affected state on or before the time that the Director provides this notice to the public as required under R18-2-330 except to the extent R18-2-319 requires the timing of the notice to be different.
  2. If the Director refuses to accept a recommendation of any affected state submitted during the public or affected state review period, the Director shall notify the Administrator and the affected state in writing. The notification shall include the Director's reasons for not accepting any such recommendation and shall be provided to the Administrator as part of the submittal of the proposed final permit. The Director shall not be required to accept recommendations that are not based on federal applicable requirements or requirements of state law.
- E.** Any person who petitions the Administrator pursuant to 40 CFR 70.8(d) shall notify the Department by certified mail of

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such petition as soon as possible, but in no case more than 10 days following such petition. Such notice shall include the grounds for objection and whether such objections were raised during the public comment period. If the Administrator objects to the permit as a result of a petition filed under this subsection, the Director shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day administrative review period and prior to the Administrator's objection.

- F.** If the Director has issued a permit prior to receipt of the Administrator's objection under subsection (E), and the Administrator indicates that it should be revised, terminated, or revoked and reissued, the Director shall reopen the permit in accordance with R18-2-321 and may thereafter issue only a revised permit that satisfies the Administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.
- G.** Prohibition on Default Issuance.
1. No Class I permit including a permit renewal or revision shall be issued until affected states and the Administrator have had an opportunity to review the proposed permit.
  2. No permit or renewal shall be issued unless the Director has acted on the application.

**Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-307 renumbered as Section R9-3-306 effective August 6, 1976 (Supp. 76-4). New Section R9-3-307 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-307 repealed, new Section R9-3-307 adopted effective May 28, 1982 (Supp. 82-3). Amended subsection (B)(4)(b) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-307 renumbered without change as R18-2-307 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-308. Emission Standards and Limitations**

Wherever applicable requirements apply different standards or limitations to a source for the same item, all applicable requirements shall be included in the permit.

**Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Section R9-3-308 repealed, new Section R9-3-308 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-308 renumbered without change as R18-2-308 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-309. Compliance Plan; Certification**

All permits shall contain the following elements with respect to compliance:

1. The elements required by R18-2-306(A)(3), (4), and (5).
2. Requirements for certifications of compliance with terms and conditions contained in the permit, including emissions limitations, standards, and work practices. Permits shall include each of the following:
  - a. The frequency of submissions of compliance certifications, which shall not be less than annually;
  - b. The means to monitor the compliance of the source with its emissions limitations, standards, and work practices;

- c. A requirement that the compliance certification include all of the following (the identification of applicable information may cross-reference the permit or previous reports, as applicable):
    - i. The identification of each term or condition of the permit that is the basis of the certification;
    - ii. The identification of the methods or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. The methods and other means shall include, at a minimum, the methods and means required under R18-2-306(A)(3). If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information;
    - iii. The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification shall be based on the methods or means designated in subsection (2)(c)(ii). The certification shall identify each deviation and take it into account in the compliance certification. For emission units subject to 40 CFR 64, the certification shall also identify as possible exceptions to compliance any period during which compliance is required and in which an excursion or exceedance defined under 40 CFR 64 occurred; and
    - iv. Other facts the Director may require to determine the compliance status of the source.
  - d. A requirement that permittees submit all compliance certifications to the Director. Class I permittees shall also submit compliance certifications to the Administrator.
  - e. Additional requirements specified in sections 114(a)(3) and 504(b) of the Act or pursuant to R18-2-306.01.
3. A requirement for any document required to be submitted by a permittee, including reports, to contain a certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Section shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
  4. Inspection and entry provisions that require that upon presentation of proper credentials, the permittee shall allow the Director to:
    - a. Enter upon the permittee's premises where a source is located, emissions-related activity is conducted, or records are required to be kept under the conditions of the permit;
    - b. Have access to and copy, at reasonable times, any records that are required to be kept under the conditions of the permit;
    - c. Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit;
    - d. Sample or monitor, at reasonable times, substances or parameters for the purpose of assuring compli-

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- ance with the permit or other applicable requirements; and
- e. Record any inspection by use of written, electronic, magnetic, or photographic media.
5. A compliance plan that contains all the following:
    - a. A description of the compliance status of the source with respect to all applicable requirements;
    - b. A description as follows:
      - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
      - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet the requirements on a timely basis; and
      - iii. For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements;
    - c. A compliance schedule as follows:
      - i. For applicable requirements with which the source is in compliance, a statement that the source will continue to comply with the requirements;
      - ii. For applicable requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis. A statement that the source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement;
      - iii. A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirement for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. The schedule of compliance shall supplement, and shall not sanction noncompliance with, the applicable requirements on which it is based.
    - d. A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a schedule of compliance to remedy a violation. The progress reports shall contain:
      - i. Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones, or compliance were achieved; and
      - ii. An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.
  6. The compliance plan content requirements specified in subsection (5) shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, and incorporated under R18-2-333 with regard to the schedule and each method the source will use to achieve compliance with the acid rain emissions limitations.
  7. If there is a Federal Implementation Plan (FIP) applicable to the source, a provision that compliance with the FIP is required.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amendment filed September 18, 1979, effective following the adoption of Article 7. Nonferrous Smelter Orders. Amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Amendment filed September 18, 1979 effective January 8, 1980 (Supp. 80-2). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-309 renumbered without change as R18-2-309 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective October 7, 1994 (Supp. 94-4). Amended effective August 1, 1995 (Supp. 95-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 10 A.A.R. 2833, effective June 17, 2004 (Supp. 04-2).

**R18-2-310. Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown****A. Applicability.**

This rule establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for standards or limitations:

1. Promulgated pursuant to Sections 111 or 112 of the Act,
2. Promulgated pursuant to Titles IV or VI of the Clean Air Act,
3. Contained in any Prevention of Significant Deterioration (PSD) or New Source Review (NSR) permit issued by the U.S. E.P.A.,
4. Contained in R18-2-715(F), or
5. Included in a permit to meet the requirements of R18-2-406(A)(5).

**B. Affirmative Defense for Malfunctions.**

Emissions in excess of an applicable emission limitation due to malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:

1. The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
2. The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
3. If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator sat-

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- isfactorily demonstrated that the measures were impracticable;
4. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
  5. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
  6. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
  7. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
  8. The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
  9. All emissions monitoring systems were kept in operation if at all practicable; and
  10. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
- C. Affirmative Defense for Startup and Shutdown.**
1. Except as provided in subsection (C)(2), and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of R18-2-310.01 and has demonstrated all of the following:
    - a. The excess emissions could not have been prevented through careful and prudent planning and design;
    - b. If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
    - c. The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
    - d. The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;
    - e. All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
    - f. During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Article 2 of this Chapter that could be attributed to the emitting source;
    - g. All emissions monitoring systems were kept in operation if at all practicable; and
    - h. The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.
  2. If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to subsection (B).
- D. Affirmative Defense for Malfunctions During Scheduled Maintenance.**  
If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to subsection (B).
- E. Demonstration of Reasonable and Practicable Measures.**  
For an affirmative defense under subsection (B) or (C), the owner or operator of the source shall demonstrate, through submission of the data and information required by this Section and R18-2-310.01, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.
- Historical Note**
- Adopted effective May 14, 1979 (Supp. 79-1). Amended effective June 19, 1981 (Supp. 81-3). Amended Arizona Testing Manual for Air Pollutant Emissions, effective September 22, 1983 (Supp. 83-5). Amended Arizona Testing Manual for Air Pollutant Emissions, as of September 15, 1984, effective August 9, 1985 (Supp. 85-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-310 renumbered without change as R18-2-310 (Supp. 87-3). Amended effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).
- R18-2-310.01. Reporting Requirements**
- A.** The owner or operator of any source shall report to the Director any emissions in excess of the limits established by this Chapter or the applicable permit. The owner or operator of any registered source may report excess emissions in accordance with this Section in order to qualify for the affirmative defense established in R18-2-310. The report shall be in two parts as specified below:
1. Notification by telephone or facsimile within 24 hours of the time the owner or operator first learned of the occurrence of excess emissions that includes all available information from subsection (B).
  2. Detailed written notification by submission of an excess emissions report within 72 hours of the notification under subsection (A)(1).
- B.** The excess emissions report shall contain the following information:
1. The identity of each stack or other emission point where the excess emissions occurred;
  2. The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
  3. The time and duration or expected duration of the excess emissions;
  4. The identity of the equipment from which the excess emissions emanated;
  5. The nature and cause of the emissions;
  6. The steps taken, if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;
  7. The steps that were or are being taken to limit the excess emissions; and
  8. If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions resulted from startup or mal-

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function, a list of the steps taken to comply with the permit procedures.

- C. In the case of continuous or recurring excess emissions, the notification requirements of this Section shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to subsections (A) and (B).

**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-311. Test Methods and Procedures**

- A. Except as otherwise specified in this Chapter, the applicable procedures and testing methods contained in the Arizona Testing Manual; 40 CFR 52, Appendices D and E; 40 CFR 60, Appendices A through F; and 40 CFR 61, Appendices B and C shall be used to determine compliance with the requirements established in this Chapter or contained in permits issued pursuant to this Chapter.
- B. Except as otherwise provided in this subsection the opacity of visible emissions shall be determined by Reference Method 9 of the Arizona Testing Manual or by alternative method ALT-082 approved by the Administrator on May 15, 2012. A permit may specify a method, other than Method 9 or ALT-082, for determining the opacity of emissions from a particular emissions unit, if the method has been promulgated by the Administrator in 40 CFR 60, Appendix A or approved by the Administrator as an alternative method.
- C. Except as otherwise specified in this Chapter, the heat content of solid fuel shall be determined according to ASTM method D-3176-89, (Practice for Ultimate Analysis of Coal and Coke) and ASTM method D-2015-91, (Test Method for Gross Calorific Value of Coal and Coke by the Adiabatic Bomb Calorimeter).
- D. Except for ambient air monitoring and emissions testing required under Articles 9 and 11 of this Chapter, alternative and equivalent test methods in any test plan submitted to the Director may be approved by the Director for the duration of that plan provided that the following three criteria are met:
1. The alternative or equivalent test method measures the same chemical and physical characteristics as the test method it is intended to replace.
  2. The alternative or equivalent test method has substantially the same or better reliability, accuracy, and precision as the test method it is intended to replace.
  3. Applicable quality assurance procedures are followed in accordance with the Arizona Testing Manual, 40 CFR 60 or other quality assurance methods which are consistent with principles contained in the Arizona Testing Manual or 40 CFR 60 as approved by the Director.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-311 renumbered without change as R18-2-311 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21,

2017 (Supp. 17-1).

**R18-2-312. Performance Tests**

- A. Except as provided in subsection (J), within 60 days after a source subject to the permit requirements of this Article has achieved the capability to operate at its maximum production rate on a sustained basis but no later than 180 days after initial start-up of such source and at such other times as may be required by the Director, the owner or operator of such source shall conduct performance tests and furnish the Director a written report of the results of the tests.
- B. Performance tests shall be conducted and data reduced in accordance with the test method and procedures contained in the Arizona Testing Manual unless the Director:
1. Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
  2. Approves the use of an equivalent method;
  3. Approves the use of an alternative method the results of which he has determined to be adequate for indicating whether a specific source is in compliance; or
  4. Waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the Director's satisfaction that the source is in compliance with the standard.
  5. Nothing in this Section shall be construed to abrogate the Director's authority to require testing.
- C. Performance tests shall be conducted under such conditions as the Director shall specify to the plant operator based on representative performance of the source. The owner or operator shall make available to the Director such records as may be necessary to determine the conditions of the performance tests. Operations during periods of start-up, shutdown, and malfunction shall not constitute representative conditions of performance tests unless otherwise specified in the applicable standard.
- D. The owner or operator of a permitted source shall provide the Director two weeks prior notice of the performance test to afford the Director the opportunity to have an observer present.
- E. The owner or operator of a permitted source shall provide, or cause to be provided, performance testing facilities as follows:
1. Sampling ports adequate for test methods applicable to such facility.
  2. Safe sampling platform(s).
  3. Safe access to sampling platform(s).
  4. Utilities for sampling and testing equipment.
- F. Each performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic means of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs is required to be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the owner or operator's control, compliance may, upon the Director's approval, be determined using the arithmetic means of the results of the two other runs. If the Director, or the Director's designee is present, tests may only be stopped with the Director's or such designee's approval. If the Director, or the Director's designee is not present, tests may only be stopped for good cause, which includes forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances beyond the operator's control. Termination of testing without good cause after the first run is commenced shall constitute a failure of the test.

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- G.** Except as provided in subsection (H) compliance with the emission limits established in this Chapter or as prescribed in permits issued pursuant to this Chapter shall be determined by the performance tests specified in this Section or in the permit.
- H.** In addition to performance tests specified in this Section, compliance with specific emission limits may be determined by:
1. Opacity tests.
  2. Emission limit compliance tests specifically designated as such in the regulation establishing the emission limit to be complied with.
  3. Continuous emission monitoring, where applicable quality assurance procedures are followed and where it is designated in the permit or in an applicable requirement to show compliance.
- I.** Nothing in this Section shall be so construed as to prevent the utilization of measurements from emissions monitoring devices or techniques not designated as performance tests as evidence of compliance with applicable good maintenance and operating requirements.
- J.** The owner or operator of a source subject to this Section may request an extension to the performance test deadline due to a force majeure event as follows:
1. If a force majeure event is about to occur, occurs, or has occurred for which the owner or operator intends to assert a claim of force majeure, the owner or operator shall notify the Director in writing as soon as practicable following the date the owner or operator first knew, or through due diligence should have known that the event may cause or caused a delay in testing beyond the regulatory deadline. The notification must occur before the performance test deadline unless the initial force majeure or a subsequent force majeure event delays the notice, and in such cases, the notification shall be given as soon as practicable.
  2. The owner or operator shall provide to the Director a written description of the force majeure event and a rationale for attributing the delay in testing beyond the regulatory deadline to the force majeure; describe the measures taken or to be taken to minimize the delay; and identify a date by which the owner or operator proposes to conduct the performance test. The performance test shall be conducted as soon as practicable after the force majeure event occurs.
  3. The decision as to whether or not to grant an extension to the performance test deadline is solely within the discretion of the Director. The Director shall notify the owner or operator in writing of approval or disapproval of the request for an extension as soon as practicable.
  4. Until an extension of the performance test deadline has been approved by the Director under paragraphs (1), (2), and (3) of this subsection, the owner or operator remains subject to the requirements of this Section.
  5. For purposes of this subsection, a "force majeure event" means an event that will be or has been caused by circumstances beyond the control of the source, its contractors, or any entity controlled by the source that prevents the owner or operator from complying with the regulatory requirement to conduct performance tests within the specified timeframe despite the source's best efforts to fulfill the obligation. Examples of such events are acts of nature, acts of war or terrorism, or equipment failure or safety hazard beyond the control of the source.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective September 28, 1984 (Supp. 84-5). Former Section R9-3-312 renumbered without change as R18-2-312

(Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-313. Existing Source Emission Monitoring**

- A.** Every source subject to an existing source performance standard as specified in this Chapter shall install, calibrate, operate, and maintain all monitoring equipment necessary for continuously monitoring the pollutants and other gases specified in this Section for the applicable source category.
1. Applicability.
    - a. Fossil-fuel fired steam generators, as specified in subsection (C)(1), shall be monitored for opacity, nitrogen oxides emissions, sulfur dioxide emissions, and oxygen or carbon dioxide.
    - b. Fluid bed catalytic cracking unit catalyst regenerators, as specified in subsection (C)(4), shall be monitored for opacity.
    - c. Sulfuric acid plants, as specified in subsection (C)(3) of this Section, shall be monitored for sulfur dioxide emissions.
    - d. Nitric acid plants, as specified in subsection (C)(2), shall be monitored for nitrogen oxides emissions.
  2. Emission monitoring shall not be required when the source of emissions is not operating.
  3. Variations.
    - a. Unless otherwise prohibited by the Act, the Director may approve, on a case-by-case basis, alternative monitoring requirements different from the provisions of this Section if the installation of a continuous emission monitoring system cannot be implemented by a source due to physical plant limitations or extreme economic reasons. Alternative monitoring procedures shall be specified by the Director on a case-by-case basis and shall include, as a minimum, annual manual stack tests for the pollutants identified for each type of source in this Section. Extreme economic reasons shall mean that the requirements of this Section would cause the source to be unable to continue in business.
    - b. Alternative monitoring requirements may be prescribed when installation of a continuous emission monitoring system or monitoring device specified by this Section would not provide accurate determinations of emissions (e.g., condensed, uncombined water vapor may prevent an accurate determination of opacity using commercially available continuous emission monitoring systems).
    - c. Alternative monitoring requirements may be prescribed when the affected facility is infrequently operated (e.g., some affected facilities may operate less than one month per year).
  4. Monitoring system malfunction: A temporary exemption from the monitoring and reporting requirements of this Section may be provided during any period of monitoring system malfunction, provided that the source owner or operator demonstrates that the malfunction was unavoidable and is being repaired expeditiously.
- B.** Installation and performance testing required under this Section shall be completed and monitoring and recording shall commence within 18 months of the effective date of this Section.
- C.** Minimum monitoring requirements:
1. Fossil-fuel fired steam generators: Each fossil-fuel fired steam generator, except as provided in the following subsections, with an annual average capacity factor of

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greater than 30%, as reported to the Federal Power Commission for calendar year 1976, or as otherwise demonstrated to the Department by the owner or operator, shall conform with the following monitoring requirements when such facility is subject to an emission standard for the pollutant in question.

- a. A continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section shall be installed, calibrated, maintained, and operated in accordance with the procedures of this Section by the owner or operator of any such steam generator of greater than 250 million Btu per hour heat input except where:
    - i. Gaseous fuel is the only fuel burned; or
    - ii. Oil or a mixture of gas and oil are the only fuels burned and the source is able to comply with the applicable particulate matter and opacity regulations without utilization of particulate matter collection equipment, and where the source has never been found to be in violation through any administrative or judicial proceedings, or accepted responsibility for any violation of any visible emission standard.
  - b. A continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section shall be installed, calibrated, using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on any fossil-fuel fired steam generator of greater than 250 million Btu per hour heat input which has installed sulfur dioxide pollutant control equipment.
  - c. A continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specification of this Section shall be installed, calibrated using nitric oxide calibration gas mixtures or other gas mixtures approved by the Director, maintained and operated on fossil-fuel fired steam generators of greater than 1000 million Btu per hour heat input when such facility is located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, unless the source owner or operator demonstrates during source compliance tests as required by the Department that such a source emits nitrogen oxides at levels 30% or more below the emission standard within this Chapter.
  - d. A continuous emission monitoring system for the measurement of the percent oxygen or carbon dioxide which meets the performance specifications of this Section shall be installed, calibrated, operated, and maintained on fossil-fuel fired steam generators where measurements of oxygen or carbon dioxide in the flue gas are required to convert either sulfur dioxide or nitrogen oxides continuous emission monitoring data, or both, to units of the emission standard within this Chapter.
2. Nitric acid plants: Each nitric acid plant of greater than 300 tons per day production capacity, the production capacity being expressed as 100% acid located in an air quality control region where the Director has specifically determined that a control strategy for nitrogen dioxide is necessary to attain the ambient air quality standard specified in R18-2-205, shall install, calibrate using nitrogen dioxide calibration gas mixtures, maintain, and operate a continuous emission monitoring system for the measurement of nitrogen oxides which meets the performance specifications of this Section for each nitric acid producing facility within such plant.
  3. Sulfuric acid plants: Each sulfuric acid plant as defined in R18-2-101, of greater than 300 tons per day production capacity, the production being expressed as 100% acid, shall install, calibrate using sulfur dioxide calibration gas mixtures or other gas mixtures approved by the Director, maintain and operate a continuous emission monitoring system for the measurement of sulfur dioxide which meets the performance specifications of this Section for each sulfuric acid producing facility within such plant.
  4. Fluid bed catalytic cracking unit catalyst regenerators at petroleum refineries. Each catalyst regenerator for fluid bed catalytic cracking units of greater than 20,000 barrels per day fresh-feed capacity shall install, calibrate, maintain and operate a continuous emission monitoring system for the measurement of opacity which meets the performance specifications of this Section for each regenerator within such refinery.
- D. Minimum specifications:** Owners or operators of monitoring equipment installed to comply with this Section shall demonstrate compliance with the following performance specifications.
1. The performance specifications set forth in Appendix B of 40 CFR 60 are incorporated herein by reference and shall be used by the Director to determine acceptability of monitoring equipment installed pursuant to this Section. However where reference is made to the Administrator in Appendix B of 40 CFR 60, the Director may allow the use of either the state-approved reference method or the federally approved reference method as published in 40 CFR 60. The performance specifications to be used with each type of monitoring system are listed below.
    - a. Continuous emission monitoring systems for measuring opacity shall comply with performance specification 1.
    - b. Continuous emission monitoring systems for measuring nitrogen oxides shall comply with performance specification 2.
    - c. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 2.
    - d. Continuous emission monitoring systems for measuring sulfur dioxide shall comply with performance specification 3.
    - e. Continuous emission monitoring systems for measuring carbon dioxide shall comply with performance specification 3.
  2. Calibration gases: Span and zero gases shall be traceable to National Bureau of Standards reference gases whenever these reference gases are available. Every six months from date of manufacture, span and zero gases shall be reanalyzed by conducting triplicate analyses using the reference methods in Appendix A of 40 CFR 60 (Chapter 1) as amended: For sulfur dioxide, use Reference Method 6; for nitrogen oxides, use Reference Method 7; and for carbon dioxide or oxygen, use Reference Method 3. The gases may be analyzed at less frequent intervals if longer shelf lives are guaranteed by the manufacturer.
  3. Cycling time: Time includes the total time required to sample, analyze, and record an emission measurement.

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- a. Continuous emission monitoring systems for measuring opacity shall complete a minimum of one cycle of sampling and analyzing for each successive six-minute period.
  - b. Continuous emission monitoring systems for measuring oxides of nitrogen, carbon dioxide, oxygen, or sulfur dioxide shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period.
4. Monitor location: All continuous emission monitoring systems or monitoring devices shall be installed such that representative measurements of emissions of process parameter (i.e., oxygen, or carbon dioxide) from the affected facility are obtained. Additional guidance for location of continuous emission monitoring systems to obtain representative samples are contained in the applicable performance specifications of Appendix B of 40 CFR 60.
  5. Combined effluents: When the effluents from two or more affected facilities of similar design and operating characteristics are combined before being released to the atmosphere through more than one point, separate monitors shall be installed.
  6. Zero and drift: Owners or operators of all continuous emission monitoring systems installed in accordance with the requirements of this Section shall record the zero and span drift in accordance with the method prescribed by the manufacturer's recommended zero and span check at least once daily, using calibration gases specified in subsection (C) as applicable, unless the manufacturer has recommended adjustments at shorter intervals, in which case such recommendations shall be followed; shall adjust the zero span whenever the 24-hour zero drift or 24-hour calibration drift limits of the applicable performance specifications in Appendix B of Part 60, Chapter 1, Title 40 CFR are exceeded.
  7. Span: Instrument span should be approximately 200% of the expected instrument data display output corresponding to the emission standard for the source.
- E. Minimum data requirement: The following subsections set forth the minimum data reporting requirements for sources employing continuous monitoring equipment as specified in this Section. These periodic reports do not relieve the source operator from the reporting requirements of R18-2-310.01.
1. The owners or operators of facilities required to install continuous emission monitoring systems shall submit to the Director a written report of excess emissions for each calendar quarter and the nature and cause of the excess emissions, if known. The averaging period used for data reporting shall correspond to the averaging period specified in the emission standard for the pollutant source category in question. The required report shall include, as a minimum, the data stipulated in this subsection.
  2. For opacity measurements, the summary shall consist of the magnitude in actual percent opacity of all six-minute opacity averages greater than any applicable standards for each hour of operation of the facility. Average values may be obtained by integration over the averaging period or by arithmetically averaging a minimum of four equally spaced, instantaneous opacity measurements per minute. Any time periods exempted shall be deleted before determining any averages in excess of opacity standards.
  3. For gaseous measurements the summary shall consist of emission averages in the units of the applicable standard for each averaging period during which the applicable standard was exceeded.
  4. The date and time identifying each period during which the continuous emission monitoring system was inoperative, except for zero and span checks and the nature of system repair or adjustment shall be reported. The Director may require proof of continuous emission monitoring system performance whenever system repairs or adjustments have been made.
  5. When no excess emissions have occurred and the continuous emission monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be included in the report.
  6. Owners or operators of affected facilities shall maintain a file of all information reported in the quarterly summaries, and all other data collected either by the continuous emission monitoring system or as necessary to convert monitoring data to the units of the applicable standard for a minimum of two years from the date of collection of such data or submission of such summaries.
- F. Data reduction: Owners or operators of affected facilities shall use the following procedures for converting monitoring data to units of the standard where necessary.
1. For fossil-fuel fired steam generators the following procedures shall be used to convert gaseous emission monitoring data in parts per million to g/million cal (lb/million Btu) where necessary.
    - a. When the owner or operator of a fossil-fuel fired steam generator elects under subsection (C)(1)(d) to measure oxygen in the flue gases, the measurements of the pollutant concentration and oxygen concentration shall each be on a consistent basis (wet or dry).
      - i. When measurements are on a wet basis, except where wet scrubbers are employed or where moisture is otherwise added to stack gases, the following conversion procedure shall be used:
 
$$E(Q) = C(ws)F(w) \left[ \frac{20.9}{20.9(1 - B(wa)) - \%O(2ws)} \right]$$
      - ii. When measurements are on a wet basis and the water vapor content of the stack gas is determined at least once every 15 minutes the following conversion procedure shall be used:
 
$$E(Q) = C(ws)F \left[ \frac{20.9}{20.9(1 - B(wa))\%O(2ws)} \right]$$

Use of this equation is contingent upon demonstrating the ability to accurately determine B(ws) such that any absolute error in B(ws) will not cause an error of more than  $\pm 1.5\%$  in the term:

$$\left[ \frac{20.9}{29.9(1 - B(wa)) - \%O(2ws)} \right]$$
      - iii. When measurements are on a dry basis, the following conversion procedure shall be used:
        - b. When the owner or operator elects under subsection (C)(1)(d) to measure carbon dioxide in the flue gases, the measurement of the pollutant concentration and the carbon dioxide concentration shall each

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$$E(Q) = CF \left[ \frac{20.9}{20.9 - \%O(2ws)} \right]$$

be on a consistent basis (wet or dry) and the following conversion procedure used;

$$E(Q) = CF(c) \left[ \frac{100}{\%CO(2)} \right]$$

- c. The values used in the equations under subsection (F)(1) above are derived as follows:

$E(Q)$  = pollutant emission, g/million cal (lb/million Btu).

$C$  = pollutant concentration, g/dscm (lb/dscf), determined by multiplying the average concentration (ppm) for each hourly period by  $4.16 \times 10^{-5}$  M g/dscm per ppm ( $2.64 \times 10^{-9}$  M lb/dscf per ppm) where  $M$  = pollutant molecular weight, g/g-mole (lb/lb-mole),  $M = 64$  for sulfur dioxide and 46 for oxides of nitrogen.

$C(ws)$  = pollutant concentrations at stack conditions, g/wscm (lb/wscf), determined by multiplying the average concentration (ppm) for each one-hour period by  $4.15 \times 10^{-5}$  M lb/wscm per ppm ( $2.59 \times 10^{-5}$  M lb/wscf per ppm) where  $M$  = pollutant molecular weight, g/g mole (lb/lb mole).  $M = 64$  for sulfur dioxide and 46 for nitrogen oxides.

$\%O(2), \%CO(2)$  = Oxygen or carbon dioxide volume (expressed as percent) determined with equipment specified under subsection (D)(1)(d).

$F, F(c)$  = A factor representing a ratio of the volume of dry flue gases generated to the calorific value of the fuel combusted ( $F$ ), a factor representing a ratio of the volume of carbon dioxide generated to the calorific value of the fuel combusted ( $F(c)$ ), respectively. Values of  $F$  and  $F(c)$  are given in 40 CFR 60.45(f) (Chapter 1).

$F(w)$  = A factor representing a ratio of the volume of wet flue gases generated to the calorific value of the fuel combusted. Values of  $F(w)$  are given in Reference Method 19 of the Arizona Testing Manual.

$B(wa)$  = Proportion by volume of water vapor in the ambient air. Approval may be given for determination of  $B(w)a$  by on-site instrumental measurement provided that the absolute accuracy of the measurement technique can be demonstrated to be within  $\pm 0.7\%$  water vapor. Estimation methods for  $B(wa)$  are given in Reference Method 19 of the Arizona Testing Manual.

$B(ws)$  = Proportion by volume of water vapor in the stack gas.

2. For sulfuric acid plants as defined in R18-2-101, the owner or operator shall:
  - a. Establish a conversion factor three times daily according to the procedures of 40 CFR 60.84(b) (Chapter 1),
  - b. Multiply the conversion factor by the average sulfur dioxide concentration in the flue gases to obtain

average sulfur dioxide emissions in Kg/metric ton (lb/short ton), and

- c. Report the average sulfur dioxide emission for each averaging period in excess of the applicable emission standard in the quarterly summary.
3. For nitric acid plants, the owner or operator shall:
  - a. Establish a conversion factor according to the procedures of 40 CFR 60.73(b) (Chapter 1),
  - b. Multiply the conversion factor by the average nitrogen oxides concentration in the flue gases to obtain the nitrogen oxides emissions in the units of the applicable standard,
  - c. Report the average nitrogen oxides emission for each averaging period in excess of applicable emission standard in the quarterly summary.
4. The Director may allow data reporting or reduction procedures varying from those set forth in this Section if the owner or operator of a source shows to the satisfaction of the Director that his procedures are at least as accurate as those in this Section. Such procedures may include but are not limited to the following:
  - a. Alternative procedures for computing emission averages that do not require integration of data (e.g., some facilities may demonstrate that the variability of their emissions is sufficiently small to allow accurate reduction of data based upon computing averages from equally spaced data points over the averaging period).
  - b. Alternative methods of converting pollutant concentration measurements to the units of the emission standards.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-313 renumbered without change as R18-2-313 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1).

#### R18-2-314. Quality Assurance

Facilities subject to the permit requirements of this Article shall submit a quality assurance plan to the Director that meets the requirements of R18-2-311(D)(3) within 12 months of the effective date of this Section. Facilities subject to the requirements of R18-2-313 shall submit a quality assurance plan as specified in the permit.

#### Historical Note

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-314 renumbered without change as R18-2-314 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

#### R18-2-315. Posting of Permit

- A. Any person who has been granted an individual or general permit shall post such permit or a certificate of permit issuance on location where the equipment is installed in such a manner as to be clearly visible and accessible. All equipment covered by the permit shall be clearly marked with one of the following:
  1. The current permit number,
  2. A serial number or other equipment number that is also listed in the permit to identify that piece of equipment.
- B. A copy of the complete permit shall be kept on the site.

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**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-315 renumbered without change as R18-2-315 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-316. Notice by Building Permit Agencies**

All agencies of the county or political subdivisions of the county that issue or grant building permits or approvals shall examine the plans and specifications submitted by an applicant for a permit or approval to determine if an air pollution permit will possibly be required under the provisions of this Chapter. If it appears that an air pollution permit will be required, the agency or political subdivision shall give written notice to the applicant to contact the Director and shall furnish a copy of that notice to the Director.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-316 renumbered without change as R18-2-316 (Supp. 87-3).

**R18-2-317. Facility Changes Allowed Without Permit Revisions - Class I**

- A.** A facility with a Class I permit may make changes that contravene an express permit term without a permit revision if all of the following apply:
1. The changes are not modifications under any provision of Title I of the Act or under A.R.S. § 49-401.01(24);
  2. The changes do not exceed the emissions allowable under the permit whether expressed therein as a rate of emissions or in terms of total emissions;
  3. The changes do not violate any applicable requirements or trigger any additional applicable requirements;
  4. The changes satisfy all requirements for a minor permit revision under R18-2-319(A);
  5. The changes do not contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements; and
  6. The changes do not constitute a minor NSR modification.
- B.** The substitution of an item of process or pollution control equipment for an identical or substantially similar item of process or pollution control equipment shall qualify as a change that does not require a permit revision, if the substitution meets all of the requirements of subsections (A), (D), and (E).
- C.** Except for sources with authority to operate under general permits, permitted sources may trade increases and decreases in emissions within the permitted facility, as established in the permit under R18-2-306(A)(12), if an applicable implementation plan provides for the emissions trades without applying for a permit revision and based on the seven working days notice prescribed in subsection (D). This provision is available if the permit does not provide for the emissions trading as a minor permit revision.
- D.** For each change under subsections (A) through (C), a written notice by certified mail or hand delivery shall be received by the Director and the Administrator a minimum of seven working days in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided less than seven working days in advance of the change but must be provided as far in advance of the change or, if advance notification is not practicable, as soon after the change as possible.
- E.** Each notification shall include:
1. When the proposed change will occur;
  2. A description of the change;

3. Any change in emissions of regulated air pollutants;
  4. The pollutants emitted subject to the emissions trade, if any;
  5. The provisions in the implementation plan that provide for the emissions trade with which the source will comply and any other information as may be required by the provisions in the implementation plan authorizing the trade;
  6. If the emissions trading provisions of the implementation plan are invoked, then the permit requirements with which the source will comply; and
  7. Any permit term or condition that is no longer applicable as a result of the change.
- F.** The permit shield described in R18-2-325 shall not apply to any change made under subsections (A) through (C). Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the implementation plan authorizing the emissions trade.
- G.** Except as otherwise provided for in the permit, making a change from one alternative operating scenario to another as provided under R18-2-306(A)(11) shall not require any prior notice under this Section.
- H.** The Director shall make available to the public monthly summaries of all notices received under this Section.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-317 renumbered without change as R18-2-317 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-317.01. Facility Changes that Require a Permit Revision - Class II**

- A.** The following changes at a source with a Class II permit shall require a permit revision:
1. A change that would trigger a new applicable requirement or violate an existing applicable requirement.
  2. Establishment of, or change in, an emissions cap under R18-2-306.02;
  3. A change that will require a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or a visibility or increment analysis;
  4. A change that results in emissions that are subject to monitoring, recordkeeping or reporting under R18-2-306(A)(3), (4), or (5) if the emissions cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
  5. A change that will authorize the burning of used oil, used oil fuel, hazardous waste, or hazardous waste fuel, or any other fuel not currently authorized by the permit;
  6. A change that requires the source to obtain a Class I permit;
  7. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better pollutant removal efficiency;
  8. Establishment or revision of a limit under R18-2-306.01;
  9. Increasing operating hours or rates of production above the permitted level;
  10. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results:

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- a. From removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
  - b. From a change in an applicable requirement; and
11. A minor NSR modification.
- B.** A source with a Class II permit may make any physical change or change in the method of operation without revising the source's permit unless the change is specifically prohibited in the source's permit or is a change described in subsection (A). A change that does not require a permit revision may still be subject to requirements in R18-2-317.02.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.

4074, effective September 22, 1999 (Supp. 99-3).

Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-317.02. Procedures for Certain Changes that Do Not Require a Permit Revision - Class II**

- A.** Except for a physical change or change in the method of operation at a Class II source requiring a permit revision under R18-2-317.01, or a change subject to logging or notice requirements in subsection (B) or (C), a change at a Class II source shall not be subject to revision, notice, or logging requirements under this Chapter.
- B.** Except as otherwise provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source keeps onsite records of the changes according to Appendix 3:
1. Implementing an alternative operating scenario, including raw material changes;
  2. Changing process equipment, operating procedures, or making any other physical change if the permit requires the change to be logged;
  3. Engaging in any new insignificant activity listed in the definition of insignificant activities in R18-2-101 but not listed in the permit;
  4. Replacing an item of air pollution control equipment listed in the permit with an identical (same model, different serial number) item. The Director may require verification of efficiency of the new equipment by performance tests; and
  5. A change that results in a decrease in actual emissions if the source wants to claim credit for the decrease in determining whether the source has a net emissions increase for any purpose. The logged information shall include a description of the change that will produce the decrease in actual emissions. A decrease that has not been logged is creditable only if the decrease is quantifiable, enforceable, and otherwise qualifies as a creditable decrease.
- C.** Except as provided in the conditions applicable to an emissions cap created under R18-2-306.02, the following changes may be made if the source provides written notice to the Department in advance of the change as provided below:
1. Replacing an item of air pollution control equipment listed in the permit with one that is not identical but that is substantially similar and has the same or better pollutant removal efficiency: seven days. The Director may require verification of efficiency of the new equipment by performance tests;
  2. A physical change or change in the method of operation that increases actual emissions more than 10% of the major source threshold for any conventional pollutant but does not require a permit revision: seven days;
  3. Replacing an item of air pollution control equipment listed in the permit with one that is not substantially similar but that has the same or better efficiency: 30 days. The Director may require verification of efficiency of the new equipment by performance tests;
  4. A change that would trigger an applicable requirement that already exists in the permit: 30 days unless otherwise required by the applicable requirement;
  5. A change that amounts to reconstruction of the source or an affected facility: seven days. For purposes of this subsection, reconstruction of a source or an affected facility shall be presumed if the fixed capital cost of the new components exceeds 50% of the fixed capital cost of a comparable entirely new source or affected facility and the changes to the components have occurred over the 12 consecutive months beginning with commencement of construction; and
  6. A change that will result in the emissions of a new regulated air pollutant above an applicable regulatory threshold but that does not trigger a new applicable requirement for that source category: 30 days. For purposes of this requirement, an applicable regulatory threshold for a conventional air pollutant shall be 10% of the applicable major source threshold for that pollutant.
- D.** For each change under subsection (C), the written notice shall be by certified mail or hand delivery and shall be received by the Director the minimum amount of time in advance of the change. Notifications of changes associated with emergency conditions, such as malfunctions necessitating the replacement of equipment, may be provided with less than required notice, but must be provided as far in advance of the change, or if advance notification is not practicable, as soon after the change as possible. The written notice shall include:
1. When the proposed change will occur,
  2. A description of the change,
  3. Any change in emissions of regulated air pollutants, and
  4. Any permit term or condition that is no longer applicable as a result of the change.
- E.** A source may implement any change in subsection (C) without the required notice by applying for a minor permit revision under R18-2-319 and complying with R18-2-319(D)(2) and (G).
- F.** The permit shield described in R18-2-325 shall not apply to any change made under this Section, other than implementation of an alternate operating scenario under subsection (B)(1).
- G.** Notwithstanding any other part of this Section, the Director may require a permit to be revised for any change that, when considered together with any other changes submitted by the same source under this Section over the term of the permit, constitutes a change under R18-317.01(A).
- H.** If a source change is described under both subsections (B) and (C), the source shall comply with subsection (C). If a source change is described under both subsection (C) and R18-2-317.01(B), the source shall comply with R18-2-317.01(B).
- I.** A copy of all logs required under subsection (B) shall be filed with the Director within 30 days after each anniversary of the permit issue date. If no changes were made at the source requiring logging, a statement to that effect shall be filed instead.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R.

4074, effective September 22, 1999 (Supp. 99-3).

Amended by final rulemaking at 18 A.A.R. 1542, effective

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tive August 7, 2012 (Supp. 12-2).

**R18-2-318. Administrative Permit Amendments**

- A.** Except for provisions pursuant to Title IV of the Act, an administrative permit amendment is a permit revision that does any of the following:
1. Corrects typographical errors;
  2. Identifies a change in the name, address, or phone number of any person identified in the permit, or provides a similar minor administrative change at the source;
  3. Requires more frequent monitoring or reporting by the permittee;
  4. Allows for a change in ownership or operational control of a source as approved under R18-2-323 where the Director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility coverage, and liability between the current and new permittee has been submitted to the Director;
- B.** Administrative permit amendments to Title IV provisions of the permit shall be governed by regulations promulgated by the Administrator under Title IV of the Act.
- C.** The Director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and for Class I permits may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this Section.
- D.** The Director shall submit a copy of Class I permits revised under this Section to the Administrator.
- E.** Except for administrative permit amendments involving a transfer under R18-2-323, the source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-318 renumbered without change as R18-2-318 (Supp. 87-3). Amended subsection (A) effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-318.01. Annual Summary Permit Amendments for Class II Permits**

The Director may amend any Class II permit annually without following R18-2-321 in order to incorporate changes reflected in logs or notices filed under R18-2-317.02. The amendment shall be effective to the anniversary date of the permit. The Director shall make available to the public for any source:

1. A complete record of logs and notices sent to the Department under R18-2-317.02; and
2. Any amendments or revisions to the source's permit.

**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

**R18-2-319. Minor Permit Revisions**

- A.** Minor permit revision procedures may be used only for those changes at a Class I source that satisfy all of the following:
1. Do not violate any applicable requirement;
  2. Do not involve substantive changes to existing monitoring, reporting, or recordkeeping requirements in the permit;
  3. Do not require or change a case-by-case determination of an emission limitation or other standard, or a source-specific determination of ambient impacts, or an analysis of

impacts on visibility or maximum increases allowed under R18-2-218;

4. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include:
    - a. A federally enforceable emissions cap that the source would assume to avoid classification as a modification under any provision of Title I of the Act; and
    - b. An alternative emissions limit approved under regulations promulgated under the section 112(i)(5) of the Act.
  5. Are not modifications under any provision of Title I of the Act;
  6. Are not changes in fuels not represented in the permit application or provided for in the permit;
  7. Are not minor NSR modifications subject to R18-2-334; and
  8. Are not required to be processed as a significant permit revision under R18-2-320.
- B.** Minor permit revision procedures shall be used for the following changes at a Class II source:
1. A change that triggers a new applicable requirement if all of the following apply:
    - a. The change is not a minor NSR modification subject to R18-2-334;
    - b. A case-by-case determination of an emission limitation or other standard is not required; and
    - c. The change does not require the source to obtain a Class I permit.
  2. A change that increases emissions above the permitted level unless the increase otherwise creates a condition that requires a significant permit revision;
  3. A change in fuel from fuel oil or coal, to natural gas or propane, if not authorized in the permit;
  4. A change that results in emissions subject to monitoring, recordkeeping, or reporting under R18-2-306(A)(3),(4), or (5) and that cannot be measured or otherwise adequately quantified by monitoring, recordkeeping, or reporting requirements already in the permit;
  5. A decrease in the emissions permitted under an emissions cap unless the decrease requires a change in the conditions required to enforce the cap or to ensure that emissions trades conducted under the cap are quantifiable and enforceable; and
  6. Replacement of an item of air pollution control equipment listed in the permit with one that does not have the same or better efficiency.
- C.** As approved by the Director, minor permit revision procedures may be used for permit revisions involving the use of economic incentives, marketable permits, emissions trading, and other similar approaches, to the extent that the minor permit revision procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the Administrator.
- D.** An application for minor permit revision shall be on the standard application form provided under R18-2-304(B) and include the following:
1. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

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2. For Class I sources, and any source that is making the change immediately after it files the application, the source's suggested draft permit;
3. Certification by a responsible official, consistent with standard permit application requirements, that the proposed revision meets the criteria for use of minor permit revision procedures and a request that the procedures be used;
- E.** EPA and affected state notification. For Class I permits, within five working days of receipt of an application for a minor permit revision, the Director shall notify the Administrator and affected states of the requested permit revision in accordance with R18-2-307.
- F.** For Class I permits, the Director shall not issue a final permit revision until after the Administrator's 45-day review period or until the Administrator has notified the Director that the Administrator will not object to issuance of the permit revision, whichever is first, although the Director may approve the permit revision before that time. Within 90 days of the Director's receipt of an application under minor permit revision procedures, or 15 days after the end of the Administrator's 45-day review period, whichever is later, the Director shall do one or more of the following:
1. Issue the permit revision as proposed,
  2. Deny the permit revision application,
  3. Determine that the proposed permit revision does not meet the minor permit revision criteria and should be reviewed under the significant revision procedures, or
  4. Revise the proposed permit revision and transmit to the Administrator the new proposed permit revision as required in R18-2-307.
- G.** The source may make the change proposed in its minor permit revision application immediately after it files the application. After a Class I source makes a change allowed by the preceding sentence, and until the Director takes any of the actions specified in subsection (F), the source shall comply with both the applicable requirements governing the change and the proposed revised permit terms and conditions. During this time period, the Class I source need not comply with the existing permit terms and conditions it seeks to modify. However, if the Class I source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to revise may be enforced against it.
- H.** The permit shield under R18-2-325 shall not extend to minor permit revisions.
- I.** Notwithstanding any other part of this Section, the Director may require a permit to be revised under R18-2-320 for any change that, when considered together with any other changes submitted by the same source under this Section or R18-2-317.02 over the life of the permit, do not satisfy subsection (A) for Class I sources or subsection (B) for Class II sources.
- J.** The Director shall make available to the public monthly summaries of all applications for minor permit revisions.
- A.** For Class I sources, a significant revision shall be used for an application requesting a permit revision that does not qualify as a minor permit revision or as an administrative amendment. A significant revision that is only required because of a change described in R18-2-319(A)(6) or (7) shall not be considered a significant permit revision under part 70 for the purposes of 40 CFR 64.5(a)(2). Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or recordkeeping permit terms or conditions shall follow significant revision procedures.
- B.** A source with a Class II permit shall make the following changes only after the permit is revised following the public participation requirements of R18-2-330:
1. Establishing or revising a voluntarily accepted emission limitation or standard as described by R18-2-306.01 or R18-2-306.02, except a decrease in the limitation authorized by R18-2-319(B)(5);
  2. Making any change in fuel not authorized by the permit and that is not fuel oil or coal, to natural gas or propane;
  3. A change that is a minor NSR modification subject to R18-2-334;
  4. A change that relaxes monitoring, recordkeeping, or reporting requirements, except when the change results from:
    - a. Removing equipment that results in a permanent decrease in actual emissions, if the source keeps onsite records of the change in a log that satisfies Appendix 3 of this Chapter and if the requirements that are relaxed are present in the permit solely for the equipment that was removed; or
    - b. A change in an applicable requirement.
  5. A change that will cause the source to violate an existing applicable requirement including the conditions establishing an emissions cap;
  6. A change that will require any of the following:
    - a. A case-by-case determination of an emission limitation or other standard;
    - b. A source-specific determination of ambient impacts, or an analysis of impacts on visibility or maximum allowable increases allowed under R18-2-218; or
    - c. A case-by-case determination of a monitoring, recordkeeping, and reporting requirement.
  7. A change that requires the source to obtain a Class I permit.
- C.** Any modification to a major source of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significant permit revision procedures and any rules adopted under A.R.S. § 49-426.03.
- D.** Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected states, and review by the Administrator that apply to permit issuance and renewal. Notwithstanding R18-2-330(C), the Director may provide notice for changes requiring a significant permit revision solely under subsection (B)(2), (4) or (6)(c) by posting a notice on the Department's web site, sending e-mails to persons who have requested electronic notification of the Department's proposed air quality permit actions and by mailing a copy of the notice as provided in R18-2-330(C)(1).
- E.** When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, it shall submit a Class I permit application in accordance with R18-2-304. The Director shall issue the entire permit, and not just the portion being revised, in accordance with Class I

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-319 renumbered without change as R18-2-319 (Supp. 87-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-320. Significant Permit Revisions**

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permit content and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

**Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 343, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-321. Permit Reopenings; Revocation and Reissuance; Termination****A. Reopening for Cause.**

1. Each issued permit shall include provisions specifying the conditions under which the permit shall be reopened prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:
  - a. Additional applicable requirements under the Act become applicable to a major source with a remaining permit term of three or more years. Such a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended pursuant to R18-2-322(B). Any permit revision required pursuant to this subsection shall comply with provisions in R18-2-322 for permit renewal and shall reset the five-year permit term.
  - b. Additional requirements, including excess emissions requirements, become applicable to an affected source under the acid rain program. Upon approval by the Administrator, excess emissions offset plans shall be deemed to be incorporated into the Class I permit.
  - c. The Director or the Administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.
  - d. The Director or the Administrator determines that the permit needs to be revised or revoked to assure compliance with the applicable requirements.
2. Proceedings to reopen and issue a permit, including appeal of any final action relating to a permit reopening, shall follow the same procedures as apply to initial permit issuance and shall, except for reopenings under subsection (A)(1)(a), affect only those parts of the permit for which cause to reopen exists. Such reopening shall be made as expeditiously as practicable.
3. Reopenings under subsection (A)(1) shall not be initiated before a notice of such intent is provided to the source by the Director at least 30 days in advance of the date that the permit is to be reopened, except that the Director may provide a shorter time period in the case of an emergency.
4. When a permit is reopened and revised pursuant to this Section, the Director may make appropriate revisions to the permit shield established pursuant to R18-2-325.

- B. Within 10 days of receipt of notice from the Administrator that cause exists to reopen a Class I permit, the Director shall notify the source. The source shall have 30 days to respond to the Director. Within 90 days of receipt of notice from the Administrator that cause exists to reopen a permit, or within any extension to the 90 days granted by EPA, the Director shall forward to the Administrator and the source a proposed determination of termination, revision, or revocation and reissuance of the permit. Within 90 days of receipt of an EPA objection to the Director's proposal, the Director shall resolve the objection and act on the permit.
- C. The Director may issue a notice of termination of a permit or registration issued pursuant to this Chapter if:
  1. The Director has reasonable cause to believe that the permit or registration was obtained by fraud or misrepresentation.
  2. The person applying for the permit or registration failed to disclose a material fact required by the application form or the regulation applicable to the permit or registration, of which the applicant had or should have had knowledge at the time the application was submitted.
  3. The terms and conditions of the permit or registration have been or are being violated.
- D. If the Director issues a notice of termination under this Section, the notice shall be served on the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation and a statement that the permittee is entitled to a hearing.

**Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-321 renumbered without change as R18-2-321 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-322. Permit Renewal and Expiration**

- A. A permit being renewed is subject to the same procedural requirements, including any for public participation and affected states and Administrator review, that would apply to that permit's initial issuance.
- B. Except as provided in R18-2-303(A), permit expiration terminates the source's right to operate unless a timely application for renewal that is sufficient under A.R.S. § 41-1064 has been submitted in accordance with R18-2-304. Any testing that is required for renewal shall be completed before the proposed permit is issued by the Director.
- C. The Director shall act on an application for a permit renewal within the same time-frames as on an initial permit.

**Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-322 renumbered without change as R18-2-322 (Supp. 87-3). Amended effective December 1, 1988 (Supp. 88-4). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-323. Permit Transfers**

- A. Except as provided in A.R.S. § 49-429 and subsection (B), a Class I or II permit may be transferred to another person if the person who holds the permit gives notice to the Director in writing at least 30 days before the proposed transfer. The notice shall contain the following:
  1. The permit number and expiration date;
  2. The name, address, and telephone number of the current permit holder;

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3. The name, address and telephone number of the person to receive the permit;
  4. The name and title of the individual within the organization who is accepting responsibility for the permit along with a signed statement by that person indicating such acceptance;
  5. A description of the equipment to be transferred;
  6. A written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee;
  7. Provisions for the payment of any fees pursuant to R18-2-326 or R18-2-501 that will be due and payable before the effective date of transfer;
  8. Sufficient information about the source's technical and financial capabilities of operating the source to allow the Director to make the decision in subsection (B) including:
    - a. The qualifications of each person principally responsible for the operation of the source;
    - b. A statement by the chief financial officer of the new permittee that it is financially capable of operating the facility in compliance with the law, and the information that provides the basis for that statement;
    - c. A brief description of any action for the enforcement of any federal or state law, or any county, city, or local government ordinance relating to the protection of the environment, instituted against any person employed by the new permittee and principally responsible for operating the facility during the five years preceding the date of application. In lieu of this description, the new permittee may submit a copy of the certificate of disclosure or 10-K form required under A.R.S. § 49-109, or a statement that this information has been filed in compliance with A.R.S. § 49-109.
- B.** The Director shall deny the transfer if the Director determines that the organization receiving the permit is not capable of operating the source in compliance with A.R.S. Title 49, Chapter 3, Article 2, the provisions of this Chapter or the provisions of the permit. Notice of the denial shall be sent to the original permit holder by certified mail stating the reason for the denial within 10 working days of the Director's receipt of the application. If the transfer is not denied within 10 working days after receipt of the notice, it shall be deemed approved.
- C.** To appeal the transfer denial:
1. Both the transferor and transferee shall petition the Office of Administrative Hearings in writing for a public hearing; and
  2. All parties shall follow the appeal process for a permit.
- D.** The Director shall make available to the public monthly summaries of all notices received under this Section.
- Historical Note**
- Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-323 renumbered without change as R18-2-323 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Section repealed, new Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).
- R18-2-324. Portable Sources**
- A.** A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has a permit issued by the Director and obtains a county permit shall request that the Director terminate the permit. Upon issuance of the county permit, the permit issued by the Director is no longer valid.
- B.** A portable source which has a county permit but proposes to operate outside that county shall obtain a permit from the Director. A portable source that has a permit issued by a county and obtains a permit issued by the Director shall request that the county terminate the permit. Upon issuance of a permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (C).
- C.** A portable source may be transferred from one location to another provided that the owner or operator of such equipment notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer prior to the transfer. The notification required under this subsection shall include:
1. A description of the equipment to be transferred including the permit number for such equipment;
  2. A description of the present location;
  3. A description of the new location;
  4. The date on which the equipment is to be moved; and
  5. The date on which operation of the equipment will begin at the new location.
- D.** Any permit for a portable source shall contain conditions that will assure compliance with all applicable requirements at all authorized locations.
- Historical Note**
- Adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).
- R18-2-325. Permit Shields**
- A.** Each Class I or II permit issued under this Chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirement as of the date of permit issuance, provided that such applicable requirements are included and expressly identified in the permit. The Director may include in a permit determinations that other requirements specifically identified are not applicable. Any permit under this Chapter that does not expressly state that a permit shield exists shall not provide such a shield.
- B.** Nothing in this Section or in any permit shall alter or affect the following:
1. The provisions of Section 303 of the Act (emergency orders), including the authority of the Administrator under that Section;
  2. The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
  3. The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;
  4. The ability of the Administrator or the Director to obtain information from a source pursuant to Section 114 of the Act, or any provision of state law;
  5. The authority of the Director to require compliance with new applicable requirements adopted after the permit is issued.

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- C. In addition to the provisions of R18-2-321, a permit may be reopened by the Director and the permit shield revised when it is determined that standards or conditions in the permit are based on incorrect information provided by the applicant.

**Historical Note**

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-326. Fees Related to Individual Permits**

- A. Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:

1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and that are subject to new source performance standards or national emission standards for hazardous air pollutants.
3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and that are not subject to new source performance standards or national emission standards for hazardous air pollutants.

- B. Fees for Permit Actions.

1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
  - a. \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
  - b. The actual costs of public notice conducted according to R18-2-330.
2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.

- C. Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:

1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$20,800
Air Curtain Destructors	\$750
Cement Plants	\$63,690

Combustion/Boilers	\$15,480
Compressor Stations	\$12,730
Electronics	\$20,490
Expandable Foam	\$14,680
Foundries	\$19,520
Landfills	\$15,960
Lime Plants	\$60,160
Copper & Nickel Mines	\$15,000
Gold Mines	\$15,000
Mobile Home Manufacturing	\$14,830
Paper Mills	\$20,480
Paper Coaters	\$15,480
Petroleum Products Terminal Facilities	\$22,730
Polymeric Fabric Coaters	\$20,480
Reinforced Plastics	\$15,480
Semiconductor Fabrication	\$26,930
Copper Smelters	\$63,690
Utilities - Fossil Fuel Fired Except Coal	\$16,440
Utilities - Coal Fired	\$32,570
Vitamin/Pharmaceutical Manufacturing	\$15,800
Wood Furniture	\$15,480
Others	\$20,490
Others with Continuous Emissions Monitoring	\$20,490

2. An emissions-based fee of \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (C)(2)(d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
  - a. For purposes of this Section, "actual emissions" means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
  - b. For purposes of this Section, regulated pollutants consist of the following:
    - i. Nitrogen oxides and any volatile organic compounds;
    - ii. Conventional air pollutants, except carbon monoxide and ozone;
    - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
    - iv. Any federally listed hazardous air pollutant.
  - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source's actual emissions:
    - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
    - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM<sub>10</sub>;
    - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(F)(8);

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- iv. Fugitive emissions of PM<sub>10</sub> from activities other than crushing, belt transfers, screening, or stacking; and
  - v. Fugitive emissions of VOC from solution-extraction units.
- d. The Director shall adjust the rate for emission-based fees every November 1, after December 4, 2007, by multiplying \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

**D.** Class II Title V Fees. The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$8,070
Portables	\$8,070
Small Source	\$750

**E.** Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$5,230
Portables	\$5,230
Gasoline Service Stations	\$750

**F.** The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.

**G.** Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:

- 1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.

- 2. The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.
- 3. If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.

**H.** The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, after December 4, 2007, by multiplying \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every November 1, to the nearest \$10, beginning December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

**I.** An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:

- 1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
  - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
  - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days after receiving a complete application.
- 2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
- 3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.

**J.** Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative

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or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by December 15 of the calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.

- K.** If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.
- L. Transition.**
1. Subsections (A) through (J) of this Section are effective December 4, 2007. The first administrative or inspection fees are due on February 1, 2008.
  2. Except as provided in subsection (b), all fees incurred after December 4, 2007, are payable in accordance with the rates contained in this Section.
    - a. Emission-based fees for calendar year 2006 shall be billed at \$38.25 per ton and be due February 1, 2008.
    - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
    - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department

**Historical Note**

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-326.01. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R. 844, effective July 1, 2010 (Supp. 10-2). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 613, effective February 14, 2017 (Supp. 17-1).

**R18-2-327. Annual Emissions Inventory Questionnaire**

- A.** Every source subject to permit requirements under this Chapter shall complete and submit to the Director an annual emissions inventory questionnaire. The questionnaire is due by March 31 or 90 days after the Director makes the inventory form available, whichever occurs later, and shall include emission information for the previous calendar year. These requirements apply whether or not a permit has been issued and whether or not a permit application has been filed.
- B.** The questionnaire shall be on a form provided by the Director and shall include the following information:
1. The source's name, description, mailing address, contact person and contact person phone number, and physical address and location, if different than the mailing address.
  2. Process information for the source, including design capacity, operations schedule, and emissions control devices, their description and efficiencies.

3. The actual quantity of emissions from permitted emission points and fugitive emissions as provided in the permit, including documentation of the method of measurement, calculation, or estimation, determined pursuant to subsection (C), of the following regulated air pollutants:
    - a. Any single regulated air pollutant in a quantity greater than 1 ton or the amount listed for the pollutant in the definition of "significant" in R18-2-101(131)(a) or (b), whichever is less.
    - b. Any combination of regulated air pollutants in a quantity greater than 2 1/2 tons.
- C.** Actual quantities of emissions shall be determined using the following emission factors or data:
1. Whenever available, emissions estimates shall either be calculated from continuous emissions monitors certified pursuant to 40 CFR 75, Subpart C and referenced appendices, or data quality assured pursuant to Appendix F of 40 CFR 60.
  2. When sufficient data pursuant to subsection (C)(1) is not available, emissions estimates shall be calculated from data from source performance tests conducted pursuant to R18-2-312 in the calendar year being reported or, when not available, conducted in the most recent calendar year representing the operating conditions of the year being reported.
  3. When sufficient data pursuant to subsection (C)(1) or (2) is not available, emissions estimates shall be calculated using emissions factors from EPA Publication No. AP-42 "Compilation of Air Pollutant Emission Factors," Volume I: Stationary Point and Area Sources, Fifth Edition, 1995, U.S. Environmental Protection Agency, Research Triangle Park, NC, including Supplements A through F and all updates published through July 1, 2011 (and no future editions). AP-42 is incorporated by reference and is on file with the Department of Environmental Quality and can be obtained from the Government Printing Office, 732 North Capitol Street, NW, Washington, D.C. 20401, telephone (202) 512-1800, or by downloading the document from the web site for the EPA Clearinghouse for Emission Inventories and Emission Factors.
  4. When sufficient data pursuant to subsections (C)(1) through (C)(3) is not available, emissions estimates shall be calculated from material balance using engineering knowledge of process.
  5. When sufficient data pursuant to subsections (C)(1) through (4) is not available, emissions estimates shall be calculated by equivalent methods approved by the Director. The Director shall only approve methods that are demonstrated as accurate and reliable as one of the methods in subsections (C)(1) through (4).
- D.** Actual quantities of emissions calculated under subsection (C) shall be determined on the basis of actual operating hours, production rates, in-place process control equipment, operational process control data, and types of materials processed, stored, or combusted.
- E.** An amendment to an annual emission inventory questionnaire, containing the documentation required by subsection (B)(3), shall be submitted to the Director by any source whenever it discovers or receives notice, within two years of the original submittal, that incorrect or insufficient information was submitted to the Director by a previous questionnaire. If the incorrect or insufficient information resulted in an incorrect annual emissions fee, the Director shall require that additional payment be made or shall apply an amount as a credit to a future annual emissions fee. The submittal of an amendment under this subsection (shall) not subject the owner or operator to an

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enforcement action or a civil or criminal penalty if the original submittal of incorrect or insufficient information was due to reasonable cause and not willful neglect.

- F. The Director may require submittal of supplemental emissions inventory questionnaires for air contaminants pursuant to A.R.S. §§ 49-422, 49-424, and 49-426.03 through 49-426.08.

**Historical Note**

Emergency rule adopted effective September 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency rule re-adopted without change effective December 16, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired; text deleted (Supp. 93-1). New Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective December 7, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-328. Conditional Orders**

- A. The Director may grant to any person a conditional order for each air pollution source which allows such person to vary from any provision of A.R.S. Title 49, Chapter 3, Article 2, or this Chapter, for any non-federally enforceable requirement of a permit issued pursuant to this Chapter if the Director makes each of the following findings:
1. Issuance of the conditional order will not endanger public health or the environment, impede attainment or maintenance of the national ambient air quality standards, or constitute a violation of the Act; and
  2. Either of the following is true:
    - a. There has been a breakdown of equipment or upset of operations beyond the control of the petitioner which causes the source to be out of compliance with the requirements of this Chapter; the source was in compliance with the requirements of this Chapter before the breakdown or upset, and the breakdown or upset may be corrected within a reasonable time;
    - b. There is no reasonable relationship between the economic and social cost of, and benefits to be obtained from, achieving compliance.
- B. The following procedures shall apply to a person seeking a conditional order:
1. The person shall file a petition for a conditional order with the Director. The petition shall contain at a minimum:
    - a. A description of the breakdown or upset;
    - b. A description of corrective action being undertaken to bring the source back into compliance;
    - c. An estimate of emissions related to the breakdown or upset;
    - d. A compliance schedule with a date of final compliance and interim dates as appropriate;
    - e. A detailed analysis of the economic and social costs and benefits of achieving compliance with the requirement for which the variance is sought, if the petition is based on subsection (A)(2)(b).
  2. If the issuance of the conditional order requires a public hearing pursuant to R18-2-330, the Director shall set the hearing date within 30 days after the filing of the petition and the hearing shall be held within 60 days after the filing of the petition.
  3. Notice of the filing of a petition for a conditional order and of the hearing date on said petition shall be published in the manner provided in A.R.S. § 49-444 and R18-2-330.
- C. Decisions on petitions for a conditional order shall be made as follows:
1. For any conditional order that requires a revision to the SIP, the Director shall comply with the requirements contained in 40 CFR 51, Subpart F.
  2. For any other conditional order, the Director shall grant or deny the petition with such terms and conditions as are listed in subsection (E)(2) within 30 days after the conclusion of any required hearing, or, if no hearing is held, within 60 days after the filing of the petition.
- D. A fee to cover the costs of processing conditional orders may be charged by the Director prior to issuance consistent with R18-2-326(I) or (J). The fee shall be deposited in the permit administration fund established in A.R.S. § 49-455.
- E. The terms of a conditional order or its renewal shall conform to the following:
1. A conditional order issued by the Director shall be valid for such period as the Director prescribes but in no event for more than one year in the case of a source that is required to obtain a permit pursuant to this Chapter and Title V of the Act, and three years in the case of any other source that is required to obtain a permit pursuant to this Chapter.
  2. The terms and conditions which are imposed as a condition to the granting or the continued existence of a conditional order shall include:
    - a. A detailed plan for completion of corrective steps needed to conform to the provisions of A.R.S. Title 49, Chapter 3, Article 2, this Chapter, and the requirements of any permit issued pursuant to this Chapter;
    - b. A requirement that necessary construction shall begin as expeditiously as practicable and proceed as specified in the compliance schedule;
    - c. Written reports, at least quarterly, of the status of the source and construction progress;
    - d. The right of the Director to make periodic inspection of the facilities for which the conditional order is granted;
    - e. Such additional terms and conditions as the Director finds necessary to meet the requirements of this Section and A.R.S. § 49-437.
  3. A holder of a conditional order may petition the Director to renew the order. The total term of the initial period and all renewals shall not exceed three years from the date of initial issuance of the order. Petitions for renewal may be filed at any time not more than 60 days nor less than 30 days prior to the expiration of the order. The Director, within 30 days of receipt of a petition, shall renew the conditional order for one year if the petitioner is in compliance and conforming with the terms and conditions imposed. The Director may refuse to renew the conditional order if, after a public hearing held within 30 days of receipt of a petition, the Director finds that the petitioner is not in compliance and conforming with the terms and conditions of the conditional order. If, after a period of three years from the date of original issuance, the petitioner is not in compliance and conforming with the terms and conditions, the Director may renew a conditional order for a total term of two additional years only if the Director finds that failure to comply and conform is due to conditions beyond the control of such petitioner.
  4. If the Director amends or adopts any rule imposing conditions on the operation of an air pollution source which

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have become effective as to the source by reason of the action of the Director or otherwise, and which require the implementation of control strategies necessitating the installation of additional or different air pollution control equipment, the Director may renew a conditional order for an additional term. The term of the renewal shall be governed by the preceding subsections of this Section, except that the total term of the renewal shall not exceed two years.

5. A conditional order issued by the Director shall be effective when issued unless:
  - a. The conditional order varies from the requirements of the applicable implementation plan, in which case the conditional order shall be submitted to the Administrator as a revision to the applicable implementation plan pursuant to Section 110(l) of the Act and shall become effective upon approval by the Administrator.
  - b. The conditional order varies from the requirements of a permit issued for a facility that is required to obtain a permit pursuant to Title V of the Act, in which case the conditional order shall be submitted to the Administrator if required by Section 505 of the Act and shall be effective at the end of the review period specified in such section, unless objected to within such period by the Administrator.
- F. Violation of the terms and conditions of the conditional order shall subject the source to suspension or revocation of the conditional order in accordance with A.R.S. § 49-441.

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-329. Permits Containing the Terms and Conditions of Federal Delayed Compliance Orders (DCO) or Consent Decrees**

- A. The terms and conditions of either a delayed compliance order (DCO) or consent decree shall be incorporated into a permit through a permit revision. In the event the permit expires prior to the expiration of the DCO or consent decree, the DCO or consent decree shall be incorporated into any permit renewal.
- B. The owner or operator of a source subject to a DCO or consent decree shall submit to the Director a quarterly report of the status of the source and construction progress and copies of any reports to the Administrator required under the order or decree. The Director may require additional reporting requirements and conditions in permits issued under this Article.
- C. For the purpose of this Chapter, sources subject to a consent decree issued by a federal court shall meet the same requirements as those subject to a DCO.

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-330. Public Participation**

- A. The Director shall provide public notice, an opportunity for public comment, and an opportunity for a hearing before taking any of the following actions:
  1. The issuance or denial of a permit or permit renewal,
  2. The issuance or denial of a significant permit revision,
  3. The revocation and reissuance or reopening of a permit,
  4. The grant of any conditional orders pursuant to R18-2-328,
  5. The issuance or denial of a registration for the construction of a source, except as provided in R18-2-302.01(B)(5).
- B. The Director shall provide public notice of receipt of complete applications for permits or permit revisions subject to Article 4

of this Chapter by publishing a notice in a newspaper of general circulation in the county where the source is or will be located.

- C. The Director shall provide the notice required pursuant to subsection (A) as follows:
  1. The Director shall publish the notice once each week for two consecutive weeks in two newspapers of general circulation in the county where the source is or will be located.
  2. The Director shall mail a copy of the notice to persons on a mailing list developed by the Director consisting of those persons who have requested in writing to be placed on such a mailing list.
  3. The notice shall include the following:
    - a. Identification of the affected facility;
    - b. Name and address of the permittee or applicant;
    - c. Name and address of the permitting authority processing the permit action;
    - d. The activity or activities involved in the permit action;
    - e. The emissions change involved in any permit revisions;
    - f. The air contaminants to be emitted;
    - g. If applicable, that a notice of confidentiality has been filed under R18-2-305;
    - h. If applicable, that the source has submitted a risk management analysis under R18-2-1708;
    - i. A statement that any person may submit written comments, or a written request for a public hearing, or both, on the proposed permit action, along with the deadline for such requests or comments;
    - j. The name, address, and telephone number of a person from the Department from whom additional information may be obtained;
    - k. Locations where the materials identified in subsection (D) may be reviewed and the times at which they shall be available for public inspection.
    - l. The Director shall include a statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits under R18-2-1204, or the utilization of emission reduction credits under R18-2-1206.
- D. By no later than the date notice is first published under subsection (A), the Department shall make copies of the following materials available at a public location in the same county as the stationary source that is the subject of the application and at the closest Department office:
  1. The application;
  2. The proposed permit or permit revision, if applicable;
  3. The Department's analysis in support of the grant or denial of the permit or permit revision; and
  4. All other materials available to the Director that are relevant to the permit decision.
- E. The Director shall hold a public hearing to receive comments on petitions for conditional orders which would vary from requirements of the applicable implementation plan. For all other actions involving a proposed permit, the Director shall hold a public hearing only upon written request. If a public hearing is requested, the Director shall schedule the hearing and publish notice as described in A.R.S. § 49-444 and subsection (D). The Director shall give notice of any public hearing at least 30 days in advance of the hearing.
- F. At the time the Director publishes the first notice under subsection (C)(1), the applicant shall post a notice containing the information required in subsection (C)(3) at the site where the source is or may be located. Consistent with federal, state, and

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local law, the posting shall be prominently placed at a location under the applicant's legal control, adjacent to the nearest public roadway, and visible to the public using the public roadway. If a public hearing is to be held, the applicant shall place an additional posting providing notice of the hearing. Any posting shall be maintained until the public comment period is closed.

- G.** The Director shall provide at least 30 days from the date of its first notice for public comment to receive comments and requests for a hearing. The Director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final proposed permit is submitted to EPA, in the case of a Class I permit, or a final decision is made, in the case of a Class II permit, the record and copies of the Director's responses shall be made available to the applicant and all commenters.

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). R18-2-330 has been corrected to include subsection (D)(12), which was omitted when the Section was amended in the 02-1 supplement (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-331. Material Permit Conditions**

- A.** For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a "material permit condition" shall mean a condition which satisfies all of the following:
1. The condition is in a permit or permit revision issued by the Director or a control officer after November 15, 1993.
  2. The condition is identified within the permit as a material permit condition.
  3. The condition is one of the following:
    - a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement;
    - b. A requirement to install, operate, or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required under Article 17 of this Chapter;
    - c. A requirement for the installation or certification of a monitoring device;
    - d. A requirement for the installation of air pollution control equipment;
    - e. A requirement for the operation of air pollution control equipment;
    - f. An opacity standard required by Section 111 or Title I, Part C or D of the Act.
  4. Violation of the condition is not covered by A.R.S. § 49-464(A) through (F), or (H) through (J) or A.R.S. § 49-514(A) through (F), or (H) through (J).
- B.** For the purposes of subsections (A)(3)(c), (d), and (e), a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this Section, "circumstances outside the control of the source" shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.

- C.** For purposes of this Section, the term "emission standard" shall have the meaning specified in A.R.S. §§ 49-464(U) and 49-514(T).

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4). Amended effective June 4, 1998 (Supp. 98-2). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2).

**R18-2-332. Stack Height Limitation**

- A.** The degree of emission limitation required of any source for control of any pollutant shall not be affected by so much of the source's stack height that exceeds good engineering practice or by any other dispersion technique, except as provided in subsection (B). This Section does not require the plan to restrict, in any manner, the actual stack height of any source.
- B.** Subsection (A) shall not apply to:
1. Stacks in existence, or dispersion techniques implemented, on or before December 31, 1970, unless the stationary source or emission unit emitting pollutants through the stack, or employing the dispersion technique, was constructed, reconstructed or underwent a major modification after December 31, 1970; or
  2. Coal-fired steam electric generating units, subject to the provisions of Section 118 of the Act which commenced operation before July 1, 1957, with stacks constructed under a construction contract awarded before February 8, 1974.
- C.** Good engineering practice stack height is the greater of the following heights:
1. 213.25 feet (65 meters) measured from the ground-level elevation at the base of the stack;
  2. The result of one of the following equations, where "Hg" = good engineering practice stack height measured from the ground-level elevation at the base of the stack; "H" = height of nearby structures measured from the ground-level elevation at the base of the stack; and "L" = lesser dimension (height or projected width) of nearby structures:
    - a. For stacks in existence on January 12, 1979, and for which the owner or operator had obtained all applicable preconstruction permits or approvals required under 40 CFR 51 and 52,  $Hg = 2.5H$ , provided the owner or operator produces evidence that this equation was actually relied on in establishing an emission limitation; or
    - b. For all other stacks,  $Hg = H + 1.5L$ , provided that EPA, the Director, or local control agency may require the use of a field study or fluid model to verify good engineering practice stack height for the source;
  3. The height demonstrated by a fluid model or a field study approved by the reviewing agency, which ensures that the emissions from a stack do not result in excessive concentrations of any air pollutant as a result of atmospheric downwash, wakes, or eddy effects created by the source itself, nearby structures, or nearby terrain features.
- D.** As used in this Section:
1. For a specific structure or terrain feature, "nearby" means:
    - a. For purposes of applying the formulae in subsection (C)(2), that distance up to five times the lesser of the height or the width dimension of a structure but not greater than 0.8 km (1/2 mile).
    - b. For conducting demonstrations under subsection (C)(3), not greater than 0.8 km (1/2 mile). An excep-

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tion is that the portion of a terrain feature may be considered to be nearby which falls within a distance of up to 10 times the maximum height (Ht) of the feature, not to exceed 2 miles if such feature achieved a height (Ht) 0.8 km from the stack that is at least 40% of the good engineering practice stack height determined by the formula provided in subsection (C)(2)(b), or 85 feet (26 meters), whichever is greater, as measured from the ground-level elevation at the base of the stack.

2. "Excessive concentrations" means:
- a. For sources seeking credit for stack height exceeding that established under subsection (C)(2), a maximum ground-level concentration due to emissions from a stack due in whole or in part to downwash, wakes, and eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and which contributes to a total concentration due to emissions from all sources that is greater than a national ambient air quality standard. For sources subject to R18-2-406, an excessive concentration alternatively means a maximum ground-level concentration due to emissions from a stack due in whole or part to downwash, wakes or eddy effects produced by nearby structures or nearby terrain features which individually is at least 40% in excess of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects and greater than the applicable maximum allowable increase contained in R18-2-218. The allowable emission rate to be used in making demonstrations under subsection (C)(3) shall be prescribed by the new source performance standard which is applicable to the source category unless the owner or operator demonstrates that this emission rate is infeasible. Where such demonstrations are approved by the Director, an alternative emission rate shall be established in consultation with the source owner or operator;
  - b. For sources seeking credit after October 11, 1983, for increases in existing stack heights up to the heights established under subsection (C)(2), either:
    - i. A maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects as provided in subsection (D)(2)(a), except that emission rate specified by any applicable SIP (or, in the absence of such a limit, the actual emission rate) shall be used; or
    - ii. The actual presence of a local nuisance caused by the existing stack, as determined by the Director; and
  - c. For sources seeking credit after January 12, 1979, for a stack height determined under subsection (C)(2), where the Director requires the use of a field study or fluid model to verify good engineering practice stack height, for sources seeking stack height credit after November 9, 1984, based on the aerodynamic influence of cooling towers, and for sources seeking stack height credit after December 31, 1970, based on the aerodynamic influence of structures not adequately represented by the equations in subsection (C)(2), a maximum ground-level concentration due in whole or in part to downwash, wakes, or eddy effects that is at least 40% in excess

of the maximum concentration experienced in the absence of such downwash, wakes, or eddy effects.

- E. Before the Director issues a permit or permit revision under R18-2-334 or Article 4 to a source based on a good engineering practice stack height that exceeds the height allowed by subsection (B)(1) or (2), the Director shall notify the public of the availability of the demonstration study and provide opportunity for a public hearing in accordance with the requirements of R18-2-330.

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4).  
Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-333. Acid Rain**

- A. 40 CFR 72, 74, 75 and 76 and all accompanying appendices, adopted as of June 28, 2013, (and no future amendments) are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.
- B. When used in 40 CFR 72, 74, 75 or 76, "Permitting Authority" means the Arizona Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.
- C. If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining portions of this Title, the regulations incorporated in this Section apply and take precedence.

**Historical Note**

Adopted effective October 7, 1994 (Supp. 94-4).  
Amended effective December 7, 1995 (Supp. 95-4).  
Amended effective December 4, 1997 (Supp. 97-4).  
Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4).

**R18-2-334. Minor New Source Review**

- A. Applicability.
  1. Except as provided in subsection (A)(4), this Section shall apply to the following activities:
    - a. Construction of any new Class I or Class II source, including the construction of any source requiring a Class II permit under R18-2-302.01(C)(4); or
    - b. Any minor NSR modification to a Class I or Class II source.
  2. This Section shall apply to a regulated minor NSR pollutant emitted by a new stationary source subject to this Section, if the source will have the potential to emit that pollutant at an amount equal to or greater than the permitting exemption threshold.
  3. This Section shall apply to an increase in emissions of a regulated minor NSR pollutant from a minor NSR modification, if the modification would increase the source's

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- potential to emit that pollutant by an amount equal to or greater than the permitting exemption threshold.
4. This Section shall not apply to the emissions of a pollutant from any of the activities identified in this subsection, if the emissions of that pollutant are subject to Article 4 of this Chapter.
- B.** No person shall begin actual construction of a new stationary source, or minor NSR modification, subject to this Section without first obtaining a permit, a permit revision, a proposed final permit, or a proposed final permit revision from the Director in accordance with R18-2-304.
- C.** The Director shall not issue a proposed final Class I permit or permit revision or a Class II permit or permit revision subject to this Section to a person proposing to construct a new source or make a minor NSR modification unless the source or modification meets one of the following conditions for each regulated minor NSR pollutant subject to this Section:
1. The owner or operator elects to implement RACT.
    - a. In the case of a new source, the owner or operator shall implement RACT for each emissions unit that has the potential to emit a regulated minor NSR pollutant in an amount equal to or greater than 20% of the permitting exemption threshold.
    - b. In the case of a minor NSR modification, the owner or operator shall implement RACT for each emissions unit that will experience an increase in the potential to emit a regulated minor NSR pollutant equal to or greater than 20% of the permitting exemption threshold.
    - c. When it is technically feasible and otherwise consistent with the definition of RACT to apply the same devices, systems, process modifications, work practices or other apparatus or techniques to a group of emissions units, that group of emissions units shall be treated as a single emissions unit for purposes of subsections (C)(1)(a) and (b). The following are examples of situations to which this subsection (may) apply:
      - i. Emissions from a group of emissions units can be vented to a single control device.
      - ii. A low-VOC coating can be used in several spray-painting booths.
  2. An ambient air quality assessment demonstrates that emissions from the source or minor NSR modification will not interfere with attainment or maintenance of a national ambient air quality standard in any area.
    - a. An owner or operator may elect to have the Director perform a screening model of its emissions. If the results of the screening model indicate that the source or minor NSR modification will interfere with attainment or maintenance of a national ambient air quality standard, the owner or operator may perform a more refined model to make the demonstration required by this subsection.
    - b. The requirements of this subsection shall be satisfied, if the results of the screening or more refined model conducted pursuant to subsection (B)(2)(a) demonstrate either of the following:
      - i. Ambient concentrations resulting from emissions from the source or modification combined with existing concentrations of regulated minor NSR pollutants will not interfere with attainment or maintenance of a national ambient air quality standard.
      - ii. Emissions from the source or minor modification will have an ambient impact below the significance levels as defined in R18-2-401.
    - c. The assessment required by this subsection shall take into account any limitations, controls or emissions decreases that are or will be enforceable in the permit or permit revision for the source.
- D.** RACT Determinations.
1. Except as otherwise provided in this subsection, the Director shall determine RACT on the basis of a case-by-case analysis performed by the permit applicant of the emission reduction methods available for each emission unit subject to the RACT requirement under subsection (C)(1).
  2. The Director shall accept a requirement proposed by a permit applicant as RACT under subsection (C)(1) if it complies with the most recently adopted of the following guidelines or standards in effect at the time of the application:
    - a. A control technique guideline issued by the Administrator under section 108(f)(1) of the Act.
    - b. An emissions standard established or revised by the Administrator for the same type of source under section 111 or 112 of the Act after November 15, 1990.
    - c. An applicable requirement of this Chapter or of air quality control regulations adopted by a County under A.R.S. § 49-479 that has been specifically identified as constituting RACT.
    - d. A RACT standard imposed on the same type of source by a general permit.
    - e. A RACT standard imposed on the same type of source under this Section no more than 10 years before submission of the application by the permit applicant. To facilitate identification of previously imposed RACT standards, the Director shall establish an online database of RACT determinations made under this Section.
- E.** Notwithstanding an election to adopt RACT under subsection (C)(1), a permit applicant subject to this Section shall conduct an ambient air quality impact assessment under subsection (C)(2) upon the Director's request. The Director shall make such a request, if there is reason to believe that a source or minor NSR modification could interfere with attainment or maintenance of a national ambient air quality standards. In making that determination, the Director shall take into consideration:
1. The source's emission rates.
  2. The location of emission units within the facility and their proximity to the ambient air.
  3. The terrain in which the source is or will be located.
  4. The source type.
  5. The location and emissions of nearby sources.
  6. Background concentrations of regulated minor NSR pollutants.
- F.** The Director shall deny an application for a Class I permit or permit revision or a Class II permit or permit revision subject to this Section, if an assessment conducted pursuant to subsection (C)(2) demonstrates that the source or modification will interfere with attainment or maintenance of a national ambient air quality standard.
- G.** A copy of the notice required by R18-2-330 for permits or significant permit revisions subject to this Section must also be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies having jurisdiction in the region in which the source subject to the permit or permit revision will be located. The

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notice also must be sent to any other agency in the region having responsibility for implementing the procedures required under 40 CFR 51, Subpart I.

- H. All modeling required pursuant to this Section shall be conducted in accordance with 40 CFR 51, Appendix W as of June 30, 2017 (and no future amendments or additions).
- I. The Director shall specify those conditions in the permit that are implemented pursuant to this Section. The specified conditions shall be included in subsequent permit renewals unless modified pursuant to this Section or Article 4 of this Chapter.
- J. The issuance of a permit or permit revision under this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

**ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES****R18-2-401. Definitions**

The following definitions apply to this Article:

1. "Adverse impact on visibility" means visibility impairment that interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of a federal Class I area, as determined according to R18-2-410. This determination must be made on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with times of visitor use of the federal Class I area and the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.
2. "Baseline actual emissions" means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with subsections (2)(a) through (d).
  - a. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The Director shall allow the use of a different time period upon a determination that it is more representative of normal source operation.
    - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
    - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period.
    - iii. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.
  - b. For any existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 10-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date a complete permit application is received by the Administrator for a permit required under 40 CFR 52.21 or by the Director for a permit required under the state implementation plan, whichever is earlier, except that the 10-year period shall not include any period earlier than November 15, 1990.
    - i. The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.
    - ii. The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above any emission limitation that was legally enforceable during the consecutive 24-month period. This provision applies to excess emissions associated with a malfunction.
    - iii. The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major source must currently comply, had such major source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR 63, the baseline actual emissions need only be adjusted if the state of Arizona has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G).
    - iv. For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units affected by the project. A different consecutive 24-month period may be used for each regulated NSR pollutant.
    - v. The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by subsection (2)(b)(ii) or (iii).
  - c. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

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- d. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures in subsection (2)(a), for other existing emissions units in accordance with the procedures contained in subsection (2)(b), and for new emissions units in accordance with the procedures contained in subsection (2)(c).
3. "Basic design parameter" means:
- a. Except as provided in subsection (3)(c), for a process unit at a steam electric generating facility, the owner or operator may select as its basic design parameters either maximum hourly heat input and maximum hourly fuel consumption rate or maximum hourly electric output rate and maximum steam flow rate. When establishing fuel consumption specifications in terms of weight or volume, the minimum fuel quality based on Btu content shall be used for determining the basic design parameters for a coal-fired electric utility steam generating unit.
  - b. Except as provided in subsection (3)(c), the basic design parameters for any process unit that is not at a steam electric generating facility are maximum rate of fuel or heat input, maximum rate of material input, or maximum rate of product output. Combustion process units will typically use maximum rate of fuel input. For sources having multiple end products and raw materials, the owner or operator should consider the primary product or primary raw material when selecting a basic design parameter.
  - c. If the owner or operator believes the basic design parameters in subsections (3)(a) and (b) are not appropriate for a specific industry or type of process unit, the owner or operator may propose to the Director an alternative basic design parameters for the source's process unit. If the Director approves of the use of an alternative basic design parameters, the Director shall issue a permit that is legally enforceable that records such basic design parameters and requires the owner or operator to comply with such parameters.
  - d. The owner or operator shall use credible information, such as results of historic maximum capability tests, design information from the manufacturer, or engineering calculations, in establishing the magnitude of the basic design parameters specified in subsections (3)(a) and (b).
  - e. If design information is not available for a process unit, then the owner or operator shall determine the process unit's basic design parameters using the maximum value achieved by the process unit in the five-year period immediately preceding the planned activity.
  - f. Efficiency of a process unit is not a basic design parameter.
  - g. The replacement activity shall not cause the process unit to exceed any emission limitation, or operational limitation that has the effect of constraining emissions, that applies to the process unit and that is legally enforceable.
4. "Complete" means, in reference to an application for a permit or permit revision, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the Department from requesting or accepting any additional information.
5. "Dispersion technique" means any technique that attempts to affect the concentration of a pollutant in the ambient air by any of the following:
- a. Using that portion of a stack that exceeds good engineering practice stack height;
  - b. Varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or
  - c. Increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters, or combining exhaust gases from several existing stacks into one stack; or other selective handling of exhaust gas streams that increases the exhaust gas plume rise. This shall not include any of the following:
    - i. The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.
    - ii. The merging of exhaust gas streams under any of the following conditions:
      - (1) The source owner or operator demonstrates that the facility was originally designed and constructed with the merged gas streams;
      - (2) After July 8, 1985, the merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant, applying only to the emission limitation for that pollutant; or
      - (3) Before July 8, 1985, the merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation was in existence prior to the merging, an increase in the quantity of pollutants actually emitted prior to the merging, the Department shall presume that merging was significantly motivated by an intent to gain emissions credit for greater dispersion. Absent a demonstration by the source owner or operator that merging was not significantly motivated by such intent, the Department shall deny credit for the effects of the merging in calculating the allowable emissions for the source.
    - iii. Smoke management in agricultural or silvicultural prescribed burning programs.
    - iv. Episodic restrictions on residential woodburning and open burning.
    - v. Techniques that increase final exhaust gas plume rise if the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.
6. "Existing emissions unit" is any emissions unit that is currently in existence and that is not a new emissions unit. A replacement unit is an existing emissions unit.
7. "Federal Class I area" means an area designated as Class I under R18-2-217.

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- 8. "High terrain" means any area having an elevation of 900 feet or more above the base of the stack of a source.
- 9. "Innovative control technology" means any system of air pollution control that has not been adequately demonstrated in practice but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice, or of achieving at least comparable reductions at lower cost in terms of energy, economics, or nonair quality environmental impacts.
- 10. "Low terrain" means any area other than high terrain.
- 11. "Lowest achievable emission rate" (LAER) means, for any source, the more stringent rate of emissions based on one of the following:
  - a. The most stringent emissions limitation that is contained in any implementation plan approved or promulgated under sections 110 or 172 of the Act for the class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that the limitation is not achievable; or
  - b. The most stringent emissions limitation that is achieved in practice by the class or category of stationary source. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within the stationary source. The application of this term shall not permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under the applicable new source performance standards.
- 12. "Major emissions unit" means:
  - a. Any emissions unit that emits or has the potential to emit 100 tons per year or more of the PAL pollutant in an attainment area; or
  - b. Any emissions unit that emits or has the potential to emit the PAL pollutant in an amount that is equal to or greater than the major source threshold for the PAL pollutant for nonattainment areas. For example, in accordance with the definition of major stationary source in section 182(c) of the Act, an emissions unit would be a major emissions unit for VOC if the emissions unit is located in a serious ozone nonattainment area and it emits or has the potential to emit 50 or more tons of VOC per year.
- 13. "Major source" is defined as follows:
  - a. For purposes of determining the applicability of R18-2-403 through R18-2-405 or R18-2-411, major source means any stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that the following thresholds shall apply in areas subject to subpart 2, subpart 3 or subpart 4 of part D, Title I of the Act:

Pollutant Emitted	Nonattainment Pollutant and Classification	Quantity Threshold tons/year or more
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Carbon Monoxide (CO)	CO, Serious, if stationary sources contribute significantly to CO levels in the area as determined under rules issued by the Administrator	50
VOC	Ozone, Serious	50
VOC	Ozone, Severe	25
PM <sub>10</sub>	PM <sub>10</sub> , Serious	70
PM <sub>2.5</sub>	PM <sub>2.5</sub> Serious	70
PM <sub>2.5</sub> precursors identified in R18-2-101(124)(a)	PM <sub>2.5</sub> Serious	70
NO <sub>x</sub>	Ozone, Serious	50
NO <sub>x</sub>	Ozone, Severe	25

- b. For purposes of determining the applicability of R18-2-406 through R18-2-408 or R18-2-410, major source means any stationary source that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant if the source is classified as a categorical source, or 250 tons per year or more of any regulated NSR pollutant if the source is not classified as a categorical source;
- c. A major source includes a physical change that would occur at a stationary source, not otherwise qualifying under subsection (13)(a) or (b) as a major source, if the change would constitute a major source by itself.
- d. A major source that is major for VOC or nitrogen oxides shall be considered major for ozone.
- e. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this Article whether it is a major source, unless the source belongs to a section 302(j) category.
- 14. "Mandatory federal Class I area" means an area identified in R18-2-217(B).
- 15. "New emissions unit" means any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.
- 16. "Plantwide applicability limitation" or "PAL" means an emission limitation that is based on the baseline actual emissions of all emissions units at the stationary source that emit or have the potential to emit the PAL pollutant, expressed in tons per year, for a pollutant at a major source, that is enforceable as a practical matter and established source-wide in accordance with this Section.
- 17. "PAL allowable emissions" means "allowable emissions" as defined in R18-2-101, except that the allowable emissions for any emissions unit shall be calculated considering any emission limitations that are enforceable as a practical matter on the emissions unit's potential to emit.
- 18. PAL effective date generally means the date of issuance of the PAL permit. However, the PAL effective date for an increased PAL is the date any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.

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- 19. "PAL effective period" means the period beginning with the PAL effective date and ending 10 years later.
- 20. "PAL major modification" means any physical change in or change in the method of operation of the PAL source that causes it to emit the PAL pollutant at a level equal to or greater than the PAL.
- 21. "PAL permit" means the permit issued by the Director that establishes a PAL for a major source under Article 3 or 4 of this Chapter.
- 22. "PAL pollutant" means the pollutant for which a PAL is established at a major source.
- 23. "Projected actual emissions" means:
  - a. The maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant during any 12-month period in the 60 calendar months following the date the unit resumes regular operation after the project, or in any 12-month period in the 120 calendar months following that date if the project involves increasing the design capacity or potential to emit of any emissions unit for that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major source.
  - b. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major source:
    - i. Shall consider all relevant information, including but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the county, state or federal regulatory authorities, and compliance plans under these regulations; and
    - ii. Shall include fugitive emissions to the extent quantifiable;
    - iii. Shall include emissions associated with startups, shutdowns, and malfunctions; and
    - iv. Shall exclude, only for calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
  - c. In lieu of using the method set out subsections 23(b)(i) through (iv), the owner or operator may elect to use the emissions unit's potential to emit, in tons per year.
- 24. "Replacement unit" means an emissions unit for which all the criteria listed in subsections (24)(a) through (d) are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.
  - a. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1), or the emissions unit completely takes the place of an existing emissions unit.
  - b. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.
  - c. The replacement does not alter the basic design parameters of the process unit.

- d. The replaced emissions unit is permanently removed from the major source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.
- 25. "Resource recovery project" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse. Only energy conversion facilities that utilize solid waste that provides more than 50% of the heat input shall be considered a resource recovery project under this Article.
- 26. "Significant emissions unit" means an emissions unit that emits or has the potential to emit a PAL pollutant in an amount that is equal to or greater than the significant level for that PAL pollutant, but less than the amount that would qualify the unit as a major emissions unit.
- 27. "Significance levels" means the following ambient concentrations for the enumerated pollutants:

Averaging Time					
Pollutant	Annual	24-Hour	8-Hour	3-Hour	1-Hour
SO <sub>2</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>		25 µg/m <sup>3</sup>	
NO <sub>2</sub>	1 µg/m <sup>3</sup>				
CO			0.5 mg/m <sup>3</sup>		2 mg/m <sup>3</sup>
PM <sub>10</sub>	1 µg/m <sup>3</sup>	5 µg/m <sup>3</sup>			
PM <sub>2.5</sub> federal Class I area	0.06 µg/m <sup>3</sup>	0.07 µg/m <sup>3</sup>			
PM <sub>2.5</sub> federal Class II area	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>			
PM <sub>2.5</sub> federal Class III area	0.3 µg/m <sup>3</sup>	1.2 µg/m <sup>3</sup>			
Except for the annual pollutant concentrations, the Department shall deem that exceedance of significance levels has occurred when the ambient concentration of the above pollutant is exceeded more than once per year at any one location. If the concentration occurs at a specific location and at a time when the national ambient air quality standards for the pollutant are not violated, the significance level does not apply.					

- 28. "Small emissions unit" means an emissions unit that emits or has the potential to emit the PAL pollutant in an amount less than the significant level for that PAL pollutant.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-401 renumbered without change as Section R18-2-401 (Supp. 87-3). Section R18-2-401 renumbered to R18-2-601. New Section R18-2-401 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22,

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1999 (Supp. 99-3). Typographical error corrected in R18-2-401(9)(a) (Supp. 00-4). Amended by final rulemaking at 13 A.A.R. 1134, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-402. General**

- A.** The preconstruction review requirements of this Article shall apply to the construction of any new major source or any project at an existing major source.
- B.** The requirements of R18-2-403 through R18-2-410 apply to the construction of any new major source or any major modification of any existing major source, except as this Article otherwise provides.
- C.** No person shall begin actual construction of a new major source or a major modification subject to the requirements of R18-2-403 through R18-2-410 without first obtaining a proposed final permit from the Director, pursuant to R18-2-307(A)(2), stating that the major source or major modification shall meet those requirements.
- D.** The requirements of this Article apply to projects at major sources in accordance with the following principles.
1. Except as otherwise provided in subsection (E), a project is a major modification for a regulated NSR pollutant if it causes both a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.
  2. The procedure for calculating before beginning actual construction whether a significant emissions increase will occur depends upon the types of emissions units being modified as set forth in subsections (D)(3) through (6). The procedure for calculating before beginning actual construction whether a significant net emissions increase will occur at the major source is set forth in the definition of net emissions increase in R18-2-101. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.
  3. Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.
  4. Actual-to-potential applicability test for projects that only involve new emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.
  5. [Reserved.]
  6. Hybrid applicability test for projects that involve both new emissions units and existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subsections (D)(3) through (D)(4), as applicable with respect to each emissions unit, equals or exceeds the significant amount for that pollutant.
- E.** Any major source with a PAL for a regulated NSR pollutant shall comply with R18-2-412.
- F.** This subsection applies with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of subsection (F)(6), that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant and the owner or operator elects to use the method specified in R18-2-401(23)(b)(i) through (iv) of the definition of projected actual emissions for calculating projected actual emissions.
1. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:
    - a. A description of the project;
    - b. Identification of the emissions unit(s) with emissions of a regulated NSR pollutant that could be affected by the project;
    - c. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions the amount of emissions excluded under R18-2-401(23)(b)(iv) of the definition of projected actual emissions, and an explanation for why such amount was excluded; and
    - d. Any netting calculations, if applicable.
  2. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subsection (F)(1) to the Director. Nothing in this subsection shall be construed to require the owner or operator of such a unit to obtain any determination from the Director before beginning actual construction.
  3. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subsection (F)(1)(b); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of 10 years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit. For purposes of this subsection, fugitive emissions (to the extent quantifiable) shall be monitored if the emissions unit is part of a section 302(j) category or if the emissions unit is located at a major stationary source that belongs to a section 302(j) category.
  4. The owner or operator shall submit a report to the Director if for a calendar year the annual emissions, in tons per year, from the project identified in subsection (F)(1) exceed the sum of the baseline actual emissions, as documented and maintained under subsection (F)(1)(c), by a significant amount for that regulated NSR pollutant, and if the emissions differ from the preconstruction projection as documented and maintained under subsection (F)(1)(c). The owner or operator shall submit the report to the Director within 60 days after the end of the calendar year. The report shall contain the following:
    - a. The name, address and telephone number of the major source;
    - b. The annual emissions as calculated pursuant to subsection (F)(3); and

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- c. Any other information that the owner or operator wishes to include in the report, such as an explanation as to why the emissions differ from the preconstruction projection.
- 5. Notwithstanding subsection (F)(4), if any existing emissions unit identified in subsection (F)(1)(b) is an electric utility steam generating unit, the owner or operator shall submit a report to the Director within 60 days after the end of each calendar year during which the owner or operator must generate records under subsection (F)(3). The report shall document the unit's post-project annual emissions during the calendar year that preceded submission of the report.
- 6. A "reasonable possibility" under subsection (F) occurs when the owner or operator calculates the project to result in one of the following:
  - a. A projected actual emissions increase of at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant.
  - b. A projected actual emissions increase that, added to the amount of emissions excluded under subsection R18-2-401(23)(b)(iv) of the definition of projected actual emissions, sums to at least 50% of the amount that is a significant emissions increase (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of subsection (F)(6)(b), and not also within the meaning of subsection (F)(6)(a), subsections (F)(2) through (5) do not apply to the project.
- 7. The owner or operator of the source shall make the information required to be documented and maintained under subsection (F) available for review upon request for inspection by the Department or the general public.
- G.** An application for a permit or permit revision under this Article, other than a PAL permit pursuant to R18-2-412, shall not be considered complete unless the application demonstrates that:
  - 1. The requirements in subsection (H) are met;
  - 2. The more stringent of the applicable new source performance standards or the existing source performance standards in Article 7 of this Chapter are applied to the proposed new major source or major modification of a major source;
  - 3. The visibility requirements contained in R18-2-410 are satisfied;
  - 4. All applicable provisions of Article 3 of this Chapter are met;
  - 5. The new major source or major modification will be in compliance with whatever emission limitation, design, equipment, work practice or operational standard, or combination thereof is applicable to the source or modification. The degree of emission limitation required for control of any pollutant under this Article shall not be affected in any manner by:
    - a. Stack height in excess of GEP stack height except as provided in R18-2-332; or
    - b. Any other dispersion technique, unless implemented prior to December 31, 1970;
  - 6. The new major source or major modification will not exceed the applicable standards for hazardous air pollutants contained in this Chapter;
  - 7. The new major source or major modification will not exceed the limitations, if applicable, on emission from nonpoint sources contained in Article 6 of this Chapter;
  - 8. The new major source or major modification will not have an adverse impact on visibility, as determined according to R18-2-410.
- H.** Except for assessing air quality impacts within federal Class I areas, the air impact analysis required to be conducted as part of a permit application shall initially consider only the geographical area located within a 50 kilometer radius from the point of greatest emissions for the new major source or major modification. The Director, on his own initiative or upon receipt of written notice from any person shall have the right at any time to request an enlargement of the geographical area for which an air quality impact analysis is to be performed by giving the person applying for the permit or permit revision written notice thereof, specifying the enlarged radius to be so considered. In performing an air impact analysis for any geographical area with a radius of more than 50 kilometers, the person applying for the permit or permit revision may use monitoring or modeling data obtained from major sources having comparable emissions or having emissions which are capable of being accurately used in such demonstration, and which are subjected to terrain and atmospheric stability conditions which are comparable or which may be extrapolated with reasonable accuracy for use in such demonstration.
- I.** The Director shall comply with following requirements with respect to an application for a permit or permit revision subject to this Article:
  - 1. Within 60 days after receipt of the application, or any addition to the application, the Director shall advise the applicant of any deficiency. The date of receipt of a complete application shall be, for the purpose of this Section, the date on which the Director receives all required information. The permit application shall not be deemed complete if the Director fails to meet the requirements of this subsection.
  - 2. Within one year after receipt of a complete application, the Director shall do all of the following:
    - a. Make a preliminary determination as to whether the permit or permit revision should be granted or denied.
    - b. Make the application, all materials the applicant submitted, the preliminary determination, and materials relating to the application available under R18-2-330(D).
    - c. Notify the public of the application, the preliminary determination and the opportunity for a public hearing and to submit written comments in accordance with R18-2-330(C). In the case of an application subject to R18-2-406, the notice shall include the degree of consumption of the maximum allowable increases allowed under R18-2-218 that is expected to occur as a result of emissions from the proposed source or modification.
    - d. Take final action on the application by denying the permit or permit revision or issuing a proposed final permit or permit revision.
    - e. Notify the applicant in writing of the approval or denial and make the notification, comments on the proposed action, and materials supporting the final action available for public inspection at the location where materials relating to the proposed action were placed under R18-2-330(D).
  - 3. A copy of any notice required by R18-2-330 and subsection (I)(2)(c) shall be sent to the permit applicant, to the

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Administrator, and to the following officials and agencies having cognizance over the location where the proposed major source or major modification would occur:

- a. The air pollution control officer, if one exists, for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
  - b. The county manager for the county wherein the proposed or existing source that is the subject of the permit or permit revision application is located;
  - c. The city or town managers of the city or town which contains, and any city or town the boundaries of which are within 5 miles of, the location of the proposed or existing source that is the subject of the permit or permit revision application;
  - d. Any regional land use planning agency with authority for land use planning in the area where the proposed or existing source that is the subject of the permit or permit revision application is located; and
  - e. Any state, Federal Land Manager, or Indian governing body whose lands may be affected by emissions from the proposed source or modification.
- J.** The authority to construct and operate a new major source or major modification under a permit or permit revision issued under this Article shall terminate if the owner or operator does not commence the proposed construction or major modification within 18 months of issuance or if, during the construction or major modification, the owner or operator suspends work for more than 18 months. The Director may extend the 18-month period upon a satisfactory showing that an extension is justified. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

**Historical Note**

Amended effective August 6, 1976 (Supp. 76-4). Former Section R9-3-402 repealed, new Section R9-3-402 adopted effective May 14, 1979 (Supp. 79-1). Amended and adopted by reference Open Burning Guidelines for Air Pollution Control effective September 22, 1983 (Supp. 83-5). Former Section R9-3-402 renumbered without change as Section R18-2-402 (Supp. 87-3). Section R18-2-402 renumbered to R18-2-602, new Section R18-2-402 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-403. Permits for Sources Located in Nonattainment Areas**

- A.** Except as provided in subsections (C) through (G) below, no permit or permit revision shall be issued under this Article to a person proposing to construct a new major source or make a major modification that is major for the pollutant for which the area is designated nonattainment unless:
1. The person demonstrates that the new major source or the major modification will meet an emission limitation which is the lowest achievable emission rate (LAER) for that source for that regulated NSR pollutant.
  2. The person demonstrates that all existing major sources owned or operated by that person (or any entity controlling, controlled by, or under common control with that person) in the state are in compliance with, or on a sched-

ule of compliance for, all conditions contained in permits of each of the sources and all other applicable emission limitations and standards under the Act and this Chapter.

3. The person demonstrates that emission reductions for the specific pollutant(s) from source(s) in existence in the allowable offset area of the new major source or major modification (whether or not under the same ownership) meet the offset requirements of R18-2-404.
  4. The Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements in this Section.
- B.** No permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source located in a nonattainment area unless:
1. The person performs an analysis of alternative sites, sizes, production processes, and environmental control techniques for such new major source or major modification; and
  2. The Director determines that the analysis demonstrates that the benefits of the new major source or major modification significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.
- C.** At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.
- D.** Secondary emissions shall not be considered in determining the potential to emit of a new source or modification and therefore whether the new source or modification is major. However, if a new source or modification is subject to this Section on the basis of its direct emissions, a permit or permit revision under this Article to construct the new source or modification shall be denied unless the requirements of R18-2-403(A)(3) and R18-2-404 are met for reasonably quantifiable secondary emissions caused by the new source or modification.
- E.** A permit to construct a new major source or major modification shall be denied unless the conditions specified in subsections (A)(1), (2), and (3) are met for fugitive emissions caused by the new source or modification. However, these conditions shall not apply to a new major source or major modification that would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.
- F.** The requirements of subsection (A)(3) shall not apply to temporary emissions units, such as pilot plants, portable facilities that will be relocated outside of the nonattainment area and the construction phase of a new source, if those units will operate for no more than 24 months in the nonattainment area, are otherwise in compliance with the requirement to obtain a permit under this Chapter and are in compliance with the conditions of that permit.
- G.** A decrease in actual emissions shall be considered in determining the potential of a new source or modification to emit only to the extent that the Director has not relied on it in issuing any permit or permit revision under this Article or the state

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has not relied on it in demonstrating attainment or reasonable further progress.

- H. The Director shall transmit to the Administrator a copy of each permit application relating to a major stationary source or major modification under this Section. Within 30 days of the issuance of any permit under this Section, the Director shall also submit control technology information from the permit to the Administrator for the purposes listed in Section 173(d) of the Act.
- I. The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.

**Historical Note**

Former Section R9-3-403 repealed, new Section R9-3-403 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-403 renumbered without change as Section R18-2-403 (Supp. 87-3). Section R18-2-403 renumbered to R18-2-603, new Section R18-2-403 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-404. Offset Standards**

- A. Increased emissions by a major source or major modification subject to R18-2-403 of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major shall be offset by real reductions in the actual emissions of the pollutant. Offsets shall be for the same regulated NSR Pollutant, except that emissions of the ozone precursors NO<sub>x</sub> and VOC may be offset by reductions in emissions of either of those pollutants, provided that all other applicable requirements of this Section and R18-2-405 are satisfied. Except as provided in R18-2-405 and subsection (J), the ratio of the total actual reductions to the emissions increase shall be at least 1 to 1.
- B. Except as provided in subsection (B)(1) or (2), for sources and modifications subject to this Section, the baseline for determining credit for emissions reductions is the emissions limit for the source generating the offset credit under the applicable implementation plan in effect at the time the application for a permit or permit revision is filed.
  - 1. The offset baseline shall be the actual emissions of the source from which offset credit is obtained where either of the following conditions is satisfied:
    - a. The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted.
    - b. The applicable implementation plan does not contain an emissions limitation for that source or source category.
  - 2. Where the emissions limit under the applicable implementation plan allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential.
- C. For an existing fuel combustion source, emissions offset credit shall be based on the allowable emissions under the applicable implementation plan for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable or actual emissions for the fuels involved is not acceptable, unless the permit for

the existing source is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a fuel generating higher emissions. The owner or operator of the existing source must demonstrate that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches.

- D. Offset Credit for Shutdowns.
  - 1. Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be credited for offsets if they meet both of the following conditions.
    - a. The reductions are surplus, permanent, quantifiable, and federally enforceable.
    - b. The shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subsection, the Director may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.
  - 2. Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements in subsection (D)(1)(b) may be credited only if one of the following conditions is satisfied:
    - a. The shutdown or curtailment occurred on or after the date the construction permit application is filed.
    - b. The applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of subsection (D)(1)(a).
- E. No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds," 42 FR 35314 (July 8, 1977).
- F. All emission reductions claimed as offset credits shall be federally enforceable by the time a proposed final permit is issued to the owner or operator of the major source subject to this Section and shall be in effect by the time the new or modified source subject to the permit commences operation.
- G. The owner or operator of a major source or major modification subject to this Section must obtain offset credits from the same source or from other sources in the same nonattainment area, except that the Director may allow the owner or operator to obtain offset credits from another nonattainment area if both of the following conditions are satisfied:
  - 1. The other area has an equal or higher nonattainment classification than the area in which the source is located.
  - 2. Emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.
- H. Credit for an emissions reduction can be claimed to the extent that the Director has not relied on it in issuing any permit under this Article, R18-2-334, or the state has not relied on it in a demonstration of attainment or reasonable further progress.
- I. The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset under this Section shall be determined by summing the difference

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between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

- J.** In ozone nonattainment areas classified as marginal, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.10 to 1. In ozone nonattainment areas classified as moderate, total emissions of VOC and oxides of nitrogen from other sources shall offset those proposed or permitted from the major source or major modification by a ratio of at least 1.15 to 1. New major sources and major modifications in serious and severe ozone nonattainment areas shall comply with this Section and R18-2-405.

**Historical Note**

Former Section R9-3-404 repealed, new Section R9-3-404 adopted effective May 14, 1979 (Supp. 79-1). Amended by adding subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-404 renumbered without change as Section R18-2-404 (Supp. 87-3). Amended subsection (C) effective December 1, 1988 (Supp. 88-4). Section R18-2-404 renumbered to R18-2-604, new Section R18-2-404 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 8 A.A.R. 1815, effective March 18, 2002 (Supp. 02-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-405. Special Rule for Major Sources of VOC or Nitrogen Oxides in Ozone Nonattainment Areas Classified as Serious or Severe**

- A.** Applicability. The provisions of this Section only apply to stationary sources of VOC or nitrogen oxides in ozone nonattainment areas classified as serious or severe. Unless otherwise provided in this Section, all requirements of Articles 3 and 4 of this Chapter apply.
- B.** "Significant" means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds or nitrogen oxides that would result from any physical change in, or change in the method of operation of, a major source, if the emissions increase of volatile organic compounds or nitrogen oxides exceeds 25 tons per year.
- C.** For any major source that emits or has the potential to emit less than 100 tons of VOC or oxides of nitrogen per year, a physical or operational change that results in a significant increase in VOC or oxides of nitrogen, respectively, from any discrete operation, unit, or other pollutant emitting activity at the source shall constitute a major modification, except that the increase shall not constitute a major modification, if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities at the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such an election, the change shall constitute a major modification but BACT shall be substituted for LAER when applying R18-2-403(A)(1) to the major modification.
- D.** For any stationary source that emits or has the potential to emit 100 tons or more of VOC or oxides of nitrogen per year, a physical or operational change that results in any significant increase in VOC from any discrete operation, unit or other pollutant emitting activity at the source or oxides of nitrogen,

respectively, shall constitute a major modification except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of VOC or oxides of nitrogen, as applicable, from other operations, units or activities within the source at an internal offset ratio of at least 1.3 to 1, R18-2-403(A)(1) shall not apply to the change.

- E.** For any new major source or major modification that is classified as major because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as serious, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.2 to 1. The offset shall be made in accordance with the provisions of R18-2-404.
- F.** For any new major source or major modification that is classified as such because of emissions or potential to emit VOC or nitrogen oxides in an ozone nonattainment area classified as severe, the increase in emissions of these pollutants from the source or modification shall be offset at a ratio of 1.3 to 1. These offsets shall be made in accordance with the provisions of R18-2-404.

**Historical Note**

Former R9-3-405, Other industries, renumbered R9-3-406, new Section adopted effective September 17, 1975 (Supp. 75-1). Former Section R9-3-405 repealed, new Section R9-3-405 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-405 renumbered without change as Section R18-2-405 (Supp. 87-3). Section R18-2-405 renumbered to R18-2-605, new Section R18-2-405 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-406. Permit Requirements for Sources Located in Attainment and Unclassifiable Areas**

- A.** Except as provided in subsections (B) through (J) and R18-2-408 (Innovative control technology), no permit or permit revision under this Article shall be issued to a person proposing to construct a new major source or make a major modification to a major source that would be constructed in an area designated as attainment or unclassifiable for any regulated NSR pollutant unless the source or modification meets the following conditions:
1. A new major source shall apply best available control technology (BACT) for each regulated NSR pollutant for which the potential to emit is significant.
  2. A major modification shall apply BACT for each regulated NSR pollutant for which the project would result in a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.
  3. For phased construction projects, the determination of BACT shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of BACT for the source.
  4. BACT shall be determined on a case-by-case basis and may constitute application of production processes or

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available methods, systems, and techniques, including fuel cleaning or treatment, clean fuels, or innovative fuel combustion techniques, for control of such pollutant. In no event shall such application of BACT result in emissions of any pollutant, which would exceed the emissions allowed by any applicable new source performance standard or national emission standard for hazardous air pollutants or by the applicable implementation plan. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice, or operation and shall provide for compliance by means which achieve equivalent results.

5. The person applying for the permit or permit revision under this Article performs an air impact analysis and monitoring as specified in R18-2-407, and the analysis demonstrates that allowable emission increases from the proposed new major source or major modification, in conjunction with all other applicable emission increases or reductions, including secondary emissions, would not cause or contribute to concentrations of conventional air pollutants in violation of:
  - a. Any national ambient air quality standard in any air quality control region; or
  - b. Any applicable maximum increase allowed under R18-2-218 over the baseline concentration in any area.
6. Air quality models:
  - a. All estimates of ambient concentrations required under this Section shall be based on the applicable air quality models, databases, and other requirements specified in 40 CFR 51, Appendix W, "Guideline On Air Quality Models," as of June 30, 2017 (and no future amendments or editions), which shall be referred to hereinafter as "Guideline" and is adopted by reference and is on file with the Department.
  - b. Where an air quality impact model specified in the "Guideline" is not applicable, the model may be modified or another model substituted. Such a change shall be subject to notice and opportunity for public comment under R18-2-330. Written approval of the EPA Administrator shall be obtained for any modification or substitution.
- B. This Section and R18-2-407 shall not apply to a new major source or major modification to a source with respect to a particular pollutant if the person applying for the permit or permit revision under this Article demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment for the pollutant. This exemption shall not apply to an area designated nonattainment for a revoked national ambient air quality standard in 40 CFR 81.
- C. This Section, R18-2-407, and R18-2-410(B), (F), and (G) shall not apply to a new major source or a major modification if the source or modification would be a major source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential emissions of the source or modification, and the source does not belong to a section 302(j) category.
  - D. This Section, R18-2-407, and R18-2-410(B), (F), and (G) shall not apply to a new major source or major modification to a source when the owner or operator of the source is a nonprofit health or educational institution.
  - E. This Section, R18-2-407, and R18-2-410(B), (F) and (G) shall not apply to a portable source which would otherwise be a new major source or major modification to an existing source if all of the following conditions are satisfied:
    1. The portable source proposes to relocate and will operate for no more than 24 months at its new location.
    2. The source is subject to a permit or permit revision issued under this Section or 40 CFR 52.21.
    3. The source is in compliance with the conditions of that permit or permit revision.
    4. Emissions from the source will not impact a federal Class I area or an area where an applicable maximum increase allowed under R18-2-218 is known to be violated.
    5. Reasonable notice is given to the Director prior to the relocation identifying the proposed new location and the probable duration of operation at the new location at least 10 calendar days in advance of the proposed relocation, unless a different time duration is previously approved by the Director.
  - F. Subsection (A)(5), R18-2-407, and R18-2-410(B) shall not apply to a proposed major source or major modification with respect to a particular pollutant, if the allowable emissions of that pollutant from the source, or the net emissions increase of that pollutant from the modification, would be temporary and impact no federal Class I area and no area where a maximum increase allowed under R18-2-218 is known to be violated.
  - G. Subsection (A)(5), R18-2-407, and R18-2-410(B) as they relate to any maximum allowable increase for a Class II area shall not apply to a modification of a major stationary source that was in existence on March 1, 1978, if the net increase in allowable emissions of each regulated NSR pollutant from the modification after the application of best available control technology would be less than 50 tons per year.
  - H. Subsection (A)(5)(b) shall not apply to a stationary source or modification with respect to any maximum increase allowed for nitrogen oxides under R18-2-218 if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved or promulgated under the Act before the provisions embodying the maximum allowable increase took effect as part of the state implementation plan and the Director subsequently determined that the application as submitted before that date was complete.
  - I. Subsection (A)(5)(b) shall not apply to a stationary source or modification with respect to any maximum increase allowed for PM<sub>10</sub> under R18-2-218 if the owner or operator of the source or modification submitted an application for a permit under the applicable permit program approved under the Act before the provisions embodying the maximum allowable increases for PM<sub>10</sub> took effect as part of the state implementation plan and the Director subsequently determined that the application as submitted before that date was complete. Instead, subsection (A)(5)(b) shall apply with respect to the maximum allowable increases for total suspended particulate as in effect on the date the application was submitted.
  - J. Subsection (A)(5)(a) shall not apply to a stationary source or modification with respect to the national ambient air quality standards for PM<sub>2.5</sub> in effect on March 18, 2013 if either of the following is true:
    1. The Director determined a permit application subject to this Section was complete on or before December 14, 2012. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for

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- PM<sub>2.5</sub> in effect at the time the Director determined the permit application to be complete.
2. The Director first published before March 18, 2013 a public notice of a proposed permit subject to this Section. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for PM<sub>2.5</sub> in effect at the time of first publication of the public notice.
- K.** Subsection (A)(5)(a) shall not apply to a stationary source or modification with respect to the revised national ambient air quality standards for ozone published on October 26, 2015 if:
1. The Director has determined the permit application subject to this Section to be complete on or before October 1, 2015. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Director determined the permit application to be complete.
  2. The Director has first published, before December 25, 2015, a public notice of a preliminary determination or draft permit for the permit application subject to this Section. Instead, subsection (A)(5)(a) shall apply with respect to the national ambient air quality standards for ozone in effect at the time the Director determined the permit application to be complete.
- L.** The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make a determination required under this Section. The owner or operator shall also provide information regarding:
1. The air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact, and
  2. The air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.
- M.** The issuance of a permit or permit revision under this Article in accordance with this Section shall not relieve the owner or operator of the responsibility to comply fully with applicable provisions of the SIP and any other requirements under local, state, or federal law.
- N.** At such time that a particular source or modification becomes a major source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this Section shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**Historical Note**

Former Section R9-3-405, renumbered effective September 17, 1975 (Supp. 75-1). Former Section R9-3-406 repealed, new Section R9-3-406 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-406 renumbered without change as Section R18-2-406 (Supp. 87-3). Section R18-2-406 renumbered to R18-2-606, new Section R18-2-406 adopted effective November 15, 1993 (Supp. 93-4). Amended effective February 28, 1995 (Supp. 95-1). The references to R18-2-101(97)(a) in subsection (A)(1) and (2) amended to reference R18-2-101(104)(a) (Supp. 99-3). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1). Amended by final rulemaking at 25 A.A.R. 3630, effective February 1, 2020 (Supp. 19-4).

**R18-2-407. Air Quality Impact Analysis and Monitoring****Requirements**

- A.** Any application for a permit or permit revision under R18-2-406 to construct a new major source or major modification to a major source shall contain an analysis of ambient air quality in the area that the new major source or major modification would affect for each of the following pollutants:
  1. For the new source, each pollutant that it would have the potential to emit in a significant amount;
  2. For the modification, each pollutant for which it would result in a significant net emissions increase.
- B.** With respect to any such pollutant for which no national ambient air quality standard exists, the analysis shall contain all air quality monitoring data as the Director determines is necessary to assess ambient air quality for that pollutant in any area that the emissions of the pollutant would affect.
- C.** With respect to any such pollutant (other than nonmethane hydrocarbons) for which such a standard does exist, the analysis shall contain continuous air quality monitoring data gathered for purposes of determining whether emissions of that pollutant would cause or contribute to a violation of the standard or any maximum allowable increase.
- D.** In general, the continuous air quality monitoring data that is required shall have been gathered over a period of at least one year and shall represent at least the year preceding receipt of the application, except that, if the Director determines that a complete and adequate analysis can be accomplished with monitoring data gathered over a period shorter than one year (but not to be less than four months), the data that is required shall have been gathered over at least that shorter period.
- E.** The owner or operator of a proposed stationary source or modification to a source of volatile organic compounds who satisfies all conditions of 40 CFR 51, Appendix S, Section IV, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under subsections (B), (C), and (D) above.
- F.** Post-construction monitoring. The owner or operator of a new major source or major modification shall, after construction of the source or modification, conduct such ambient monitoring as the Director determines is necessary to determine the effect emissions from the new source or modification may have, or are having, on air quality in any area.
- G.** Operations of monitoring stations. The owner or operator of a new major source or major modification shall meet the requirements of 40 CFR 58, Appendix B, during the operation of monitoring stations for purposes of satisfying subsections (B) through (F) above.
- H.** The requirements of subsections (B) through (G) above shall not apply to a new major source or major modification to an existing source with respect to monitoring for a particular pollutant if:
  1. The emissions increase of the pollutant from the new source or the net emissions increase of the pollutant from the modification would cause, in any area, air quality impacts less than the following amounts:
    - a. Carbon Monoxide - 575 µg/m<sup>3</sup>, eight-hour average;
    - b. Nitrogen dioxide - 14 µg/m<sup>3</sup>, annual average;
    - c. PM<sub>2.5</sub> - 0 µg/m<sup>3</sup>, 24-hour average;
    - d. PM<sub>10</sub> - 10 µg/m<sup>3</sup>, 24-hour average;
    - e. Sulfur dioxide - 13 µg/m<sup>3</sup>, 24-hour average;
    - f. Lead - 0.1 µg/m<sup>3</sup>, 3-month average;
    - g. Fluorides - 0.25 µg/m<sup>3</sup>, 24-hour average;
    - h. Total reduced sulfur - 10 µg/m<sup>3</sup>, one-hour average;
    - i. Hydrogen sulfide - 0.04 µg/m<sup>3</sup>, one-hour average;
    - j. Reduced sulfur compounds - 10 µg/m<sup>3</sup>, one-hour average;

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- k. Ozone - net emissions increases of less than 100 tons per year of volatile organic compounds or oxides of nitrogen;
  - 2. The concentrations of the pollutant in the area that the new source or modification would affect are less than the concentrations listed in subsection (H)(1); or
  - 3. The pollutant is not listed in subsection (H)(1).
- 2. The proposed system fails before the specified date so as to contribute to an unreasonable risk to public health, welfare, or safety; or
  - 3. The Director decides at any time that the proposed system is unlikely to achieve the required level of control or to protect the public health, welfare, or safety.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-407 renumbered without change as Section R18-2-407 (Supp. 87-3). Section R18-2-407 renumbered to R18-2-607, new Section R18-2-407 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-408. Innovative Control Technology**

- A. Notwithstanding the provisions of R18-2-406(A)(1) through (3), the owner or operator of a proposed new major source or major modification may request that the Director approve a system of innovative control technology rather than the best available control technology requirements otherwise applicable to the new source or modification.
- B. The Director shall approve the installation of a system of innovative control technology if the following conditions are met:
  - 1. The owner or operator of the proposed source or modification satisfactorily demonstrates that the proposed control system would not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function;
  - 2. The owner or operator agrees to achieve a level of continuous emissions reduction equivalent to that which would have been required under R18-2-406(A)(1) or (2) by a date specified in the permit or permit revision under this Article for the source. Such date shall not be later than four years from the time of start-up or seven years from the issuance of a permit or permit revision under this Article;
  - 3. The source or modification would meet requirements equivalent to those in R18-2-406(A) based on the emissions rate that the stationary source employing the system of innovative control technology would be required to meet on the date specified in the permit or permit revision under this Article.
  - 4. Before the date specified in the permit or permit revision under this Article, the source or modification would not:
    - a. Cause or contribute to any violation of an applicable national ambient air quality standard; or
    - b. Impact any area where an applicable maximum increase allowed under R18-2-208 is known to be violated.
  - 5. All other applicable requirements including those for public participation have been met.
  - 6. The Director receives the consent of the governors of other affected states.
  - 7. The requirements of R18-2-410 for federal Class I areas will be met for all periods during the life of the source or modification.
- C. The Director shall withdraw any approval to employ a system of innovative control technology made under this Section if:
  - 1. The proposed system fails by the specified date to achieve the required continuous emissions reduction rate; or

- D. If the new source or major modification fails to meet the required level of continuous emissions reduction within the specified time period, or if the approval is withdrawn in accordance with subsection (C) above, the Director may allow the owner or operator of the source or modification up to an additional three years to meet the requirement for the application of best available control technology through use of a demonstrated system of control.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Former Section R9-3-408 renumbered without change as Section R18-2-408 (Supp. 87-3). Section R18-2-408 renumbered to R18-2-608, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-409. Air Quality Models**

- A. Where the Director requires a person requesting a permit or permit revision under this Article to perform air quality impact modeling to obtain such permit or permit revision under this Article, the modeling shall be performed in a manner consistent with the Guideline specified in R18-2-406(A)(6)(a).
- B. Where the person requesting a permit or permit revision under this Article can demonstrate that an air quality impact model specified in the Guideline is inappropriate, the model may be modified or another model substituted. However, before such modification or substitution can occur, the Director shall make a written finding that:
  - 1. No model in the Guideline is appropriate for a particular permit or permit revision under this Article under consideration, or
  - 2. The data base required for the appropriate model in the Guideline is not available, and
  - 3. The model proposed as a substitute or modification is likely to produce results equal or superior to those obtained by models in the Guideline, and
  - 4. The model proposed as a substitute or modification has been approved by the Administrator.
- C. The substitution or modification of an air quality model under this Section shall be included in the public notice under R18-2-330(C).

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-409 renumbered without change as Section R18-2-409 (Supp. 87-3). Section R18-2-409 renumbered to R18-2-609, new Section R18-2-409 adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-410. Visibility and Air Quality Related Value Protection**

- A. Applicability.
  - 1. All of the requirements of this Section apply to a new major source or major modification that would be constructed in an area that is designated attainment or unclassifiable.
  - 2. Subsections (B) to (D) apply to the following:
    - a. A new major source or major modification that may have an impact on any integral vista of a mandatory federal Class I area, if it is identified in accordance

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with 40 CFR 51.304 by the Federal Land Manager at least twelve months before submission of a complete permit application for the source or modification, except where the Federal Land Manager has provided notice and opportunity for public comment on the integral vista, in which case the review must include impacts on any integral vista identified at least six months before submission of a complete permit application. This subsection shall not apply if the Director determines under 40 CFR 51.304(d) that the identification was not in accordance with the identification criteria.

- b. A new major source or major modification that proposes to locate in an area designated as nonattainment and that may have an impact on visibility in any mandatory federal Class I area.

**B. Application Requirements.** Any application for a permit or permit revision to construct a major source or major modification subject to this Section shall contain:

- 1. An analysis of the impairment to visibility, soils, and vegetation that would occur as a result of the new source or modification and general commercial, residential, industrial, and other growth associated with the new source or modification. The applicant need not provide an analysis of the impact on vegetation having no significant commercial or recreational value.
- 2. An analysis of the air quality impact projected for the area as a result of general commercial, residential, industrial, and other growth associated with the new source or modification.

**C. Notification Requirements.**

- 1. The Director shall provide written notice of the application for a permit or permit revision subject to this Section to the Administrator, the Federal Land Manager and the federal official charged with direct responsibility for management of any lands within any Class I area that may be affected by the source or modification. The notice shall be provided within 30 days of receipt of the application and at least 60 days before any public hearing on the application. The notice shall:
  - a. Include a copy of the application and all information relevant to the permit or permit revision under this Article;
  - b. Include an analysis of the anticipated impacts of the proposed source on visibility in any federal Class I area; and
  - c. Provide for no less than a 30-day period within which written comments may be submitted.
- 2. The Director shall notify the individuals identified in subsection (C)(1) within 30 days of receipt of any advance notification of any such permit or permit revision.
- 3. The Director shall notify the individuals identified in subsection (C)(1) of the preliminary determination for the application under R18-2-402(I)(2)(c) and shall make available any materials used in making that determination.
- 4. The Director shall provide notice to the administrator of every action related to the consideration of such permit or permit revision.

**D. Consideration of Federal Land Manager Analysis.**

- 1. The Federal Land Manager and the federal official charged with direct responsibility for management of federal Class I areas have an affirmative responsibility to protect the air quality related values, including visibility, of any such areas and to consider, in consultation with the

Administrator, whether a proposed source or modification would have an adverse impact on such values.

- 2. The Director shall consider any analysis performed by the Federal Land Manager and provided within 30 days of the notification required by subsection (C)(1) that shows that a proposed new major stationary source or major modification may have an adverse impact on visibility in a federal Class I area or integral vista.
- 3. In considering the analysis, the Director shall ensure that the source's emissions will be consistent with making reasonable progress toward the national visibility goal referred to in 40 CFR 51.300(a), taking into account the costs of compliance, the time necessary for compliance, the energy and nonair quality environmental impacts of compliance, and the useful life of the source.
- 4. If the Director concurs with the analysis, the Director shall deny the permit or permit revision.
- 5. If the Director finds that the analysis does not demonstrate to the satisfaction of the Director that an adverse impact on visibility will result in the federal Class I area or integral vista, the Director shall, in the notice required by R18-2-402(I)(2)(c), either explain that decision or give notice as to where the explanation can be obtained.

**E. Federal Land Manager Analysis Showing Adverse Impact Despite Compliance with Maximum Allowable Increases for Class I Area.**

- 1. Within 30 days after the notification required by subsection (C)(3), the Federal Land Manager may present to the Director a demonstration that the emissions attributed to a new major source or major modification would have an adverse impact on visibility or other specifically defined air quality related values of any mandatory federal Class I area, even though the change in air quality resulting from emissions attributable to the source or modification will not cause or contribute to concentrations that exceed the maximum increases allowed for the area in R18-2-218.
- 2. If the Director concurs with the demonstration, the Director shall not issue a permit or permit revision for the major source or major modification.

**F. Class I Variance with Federal Land Manager Concurrence.**

- 1. The owner or operator of a proposed source or modification may demonstrate to the Federal Land Manager that emissions from the source will have no adverse impact on the air quality related values (including visibility) of federal Class I areas, even though the change in air quality resulting from emissions from the source or modification are projected to cause or contribute to concentrations that exceed the maximum increases allowed for a Class I area under R18-2-218.
- 2. If the Federal land manager concurs with the demonstration and so certifies to the Director, the Director may issue the permit, provided that:
  - a. Applicable requirements are otherwise met; and
  - b. The permit contains emission limits necessary to assure that emissions of sulfur dioxide, PM<sub>2.5</sub>, PM<sub>10</sub>, and nitrogen oxides will not cause increases in ambient concentrations of those pollutants exceeding the following maximum allowable increases over minor source baseline concentrations:

Pollutant	Maximum allowable increase (micrograms per cubic meter)
PM <sub>2.5</sub> :	
Annual arithmetic mean	4

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24-hr maximum	9
PM <sub>10</sub> :	
Annual arithmetic mean	17
24-hr maximum	30
Sulfur dioxide:	
Annual arithmetic mean	20
24-hr maximum	91
3-hr maximum	325
Nitrogen dioxide	
Annual arithmetic mean	25

**G. Class I Sulfur Dioxide Variance by Governor with Concurrence by Federal Land Manager or President.**

- The owner or operator of a proposed source or modification that cannot be approved under subsection (F) may demonstrate to the Governor that the source cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for a period of twenty-four hours or less applicable to any Class I area and, in the case of mandatory federal Class I areas, that a variance under this clause would not adversely affect the air quality related values of the area (including visibility). The Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may, after notice and public hearing, grant a variance from the maximum allowable increase. If the variance is granted, the Director shall issue a permit or permit to the source or modification pursuant to the requirements of subsection (G)(3), provided that the applicable requirements of R18-2-406 are otherwise met.
- In any case where the Governor recommends a variance in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if the President finds that the variance is in the national interest. If the variance is approved, the Director shall issue a permit pursuant to subsection (G)(3), provided that the applicable requirements of R18-2-406 are otherwise met.
- In the case of a permit issued pursuant to subsection (G)(1) or (G)(2) the source or modification shall comply with emission limitations necessary to assure that emissions of sulfur dioxide from the source or modification will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that would exceed the following maximum allowable increases over the baseline concentration and to assure that the emissions will not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less for more than 18 days, not necessarily consecutive, during any annual period:

Maximum Allowable Increase [Micrograms per cubic meter]		
Period of exposure	Terrain areas	
	Low	High
24-hr maximum	36	62
3-hr maximum	130	221

**H. Visibility Monitoring.** The Director may require monitoring of visibility in any federal Class I area near a proposed major

source or major modification for such purposes and by such means as the Director deems necessary and appropriate.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-410 renumbered without change as Section R18-2-410 (Supp. 87-3). Section R18-2-410 renumbered to R18-2-610, new Section R18-2-410 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-411. Permit Requirements for Sources that Locate in Attainment or Unclassifiable Areas and Cause or Contribute to a Violation of Any National Ambient Air Quality Standard**

- Except as provided in subsection (C) or (D), the Director shall deny a permit or permit revision to any major source or major modification that would locate in any attainment or unclassified area, if the source or modification would cause or contribute to a violation of any national ambient air quality standard.
- A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when the source or modification would, at a minimum, cause an increase in the concentrations of a regulated NSR pollutant that exceeds the significance level at any locality that does not, or as a result of the increase would not, meet the standard.
- A proposed major source or major modification subject to subsection (A) may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or contribute to a violation of any national ambient air quality standard.
- Subsection (A) shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as non-attainment pursuant to section 107 of the Act.

**Historical Note**

Adopted effective November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-412. PALs**

- Applicability.
  - The Director may approve the use of a PAL for any existing major source if the PAL meets the requirements of this Section.
  - Any physical change in or change in the method of operation of a major stationary source that maintains its total source-wide emissions below the PAL level, meets the requirements of this Section, and complies with the PAL permit:
    - Is not a major modification for the PAL pollutant,
    - Does not have to be approved under R18-2-403 or R18-2-406, and
    - Is not subject to the provisions in R18-2-403(C) or R18-2-406(M).
  - Except as provided under subsection (A)(2)(c), a major stationary source shall continue to comply with all applicable federal or state requirements, emission limitations, and work practice requirements that were established prior to the effective date of the PAL.

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- B.** Permit application requirements. As part of a permit application requesting a PAL, the owner or operator of a major source shall submit the following information to the Director for approval:
1. A list of all emissions units at the source designated as small, significant or major based on their potential to emit. In addition, the owner or operator of the source shall indicate which, if any, federal or state applicable requirements, emission limitations, or work practices apply to each unit.
  2. Calculations of the baseline actual emissions (with supporting documentation). Baseline actual emissions shall include emissions associated not only with operation of the unit, but also emissions associated with the startup, shutdown and malfunction.
  3. The calculation procedures that the major source owner or operator proposes to use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total for each month as required by subsection (L)(1).
- C.** General requirements for establishing PALs.
1. The Director is allowed to establish a PAL at a major source, provided that at a minimum, the following requirements are met:
    - a. The PAL shall impose an annual emission limitation in tons per year, that is enforceable as a practical matter, for the entire major source. For each month during the PAL effective period after the first 12 months of establishing a PAL, the major source owner or operator shall show that the sum of the monthly emissions from each emissions unit under the PAL for the previous 12 consecutive months is less than the PAL (a 12-month sum, rolled monthly). For each month during the first 11 months from the PAL effective date, the major source owner or operator shall show that the sum of the preceding monthly emissions from the PAL effective date for each emissions unit under the PAL is less than the PAL.
    - b. The PAL shall be established in a PAL permit that meets the requirements in subsection (D).
    - c. The PAL permit shall contain all the requirements of subsection (F).
    - d. The PAL shall include fugitive emissions, to the extent quantifiable, from all emissions units that emit or have the potential to emit the PAL pollutant at the major source.
    - e. Each PAL shall regulate emissions of only one pollutant.
    - f. Each PAL shall have a PAL effective period of 10 years.
    - g. The owner or operator of the major source with a PAL shall comply with the monitoring, recordkeeping, and reporting requirements provided in subsections (K) through (M) for each emissions unit under the PAL through the PAL effective period.
  2. At no time (during or after the PAL effective period) are emissions reductions of a PAL pollutant that occur during the PAL effective period creditable as decreases for purposes of offsets under R18-2-404 unless the level of the PAL is reduced by the amount of such emissions reductions and such reductions would be creditable in the absence of the PAL.
- D.** Action on PAL permit application. A PAL permit application shall be processed in accordance with one of the following:
1. As an initial Class I permit pursuant to R18-2-304.
  2. As a renewal of a Class I permit pursuant to R18-2-322.
  3. As a significant revision to a Class I permit pursuant to R18-2-320.
- E.** Setting the 10-year actuals PAL level.
1. Except as provided in subsection (E)(2), the PAL level for a major source shall be established as the sum of the baseline actual emissions of the PAL pollutant for each emissions unit at the source; plus an amount equal to the applicable significant level for the PAL pollutant. When establishing the PAL level, only one consecutive 24-month period must be used to determine the baseline actual emissions for all existing emissions units. However, a different consecutive 24-month period may be used for each different PAL pollutant. Emissions associated with units that were permanently shut down after this 24-month period must be subtracted from the PAL level. The Director shall specify a reduced PAL level(s) (in tons/yr) in the PAL permit to become effective on the future compliance date(s) of any applicable federal or state regulatory requirement(s) that the Director is aware of prior to issuance of the PAL permit. For instance, if the source owner or operator will be required to reduce emissions from industrial boilers in half from baseline emissions of 60 ppm NO<sub>x</sub> to a new rule limit of 30 ppm, then the permit shall contain a future effective PAL level that is equal to the current PAL level reduced by half of the original baseline emissions of such unit(s).
  2. For newly constructed units (which do not include modifications to existing units) on which actual construction began after the 24-month period, in lieu of adding the baseline actual emissions as specified in subsection (E)(1), the emissions must be added to the PAL level in an amount equal to the potential to emit of the units.
- F.** Contents of the PAL permit. The PAL permit must contain, at a minimum, the following information:
1. The PAL pollutant and the applicable source-wide emission limitation in tons per year.
  2. The PAL permit effective date and the expiration date of the PAL (PAL effective period).
  3. Specification in the PAL permit that if a major source owner or operator applies to renew a PAL in accordance with subsection (I) before the end of the PAL effective period, then the PAL shall not expire at the end of the PAL effective period. It shall remain in effect until a revised PAL permit is issued by the Director.
  4. A requirement that emission calculations for compliance purposes must include emissions from startups, shutdowns, and malfunctions.
  5. A requirement that, once the PAL expires, the major source is subject to the requirements of subsection (H).
  6. The calculation procedures that the major source owner or operator shall use to convert the monitoring system data to monthly emissions and annual emissions based on a 12-month rolling total as required by subsection (L)(1).
  7. A requirement that the major source owner or operator monitor all emissions units in accordance with the provisions under subsection (K).
  8. A requirement to retain the records required under subsection (L) onsite. Such records may be retained in an electronic format.
  9. A requirement to submit the reports required under subsection (M) by the required deadlines.
  10. Any other requirements that the Director deems necessary to implement and enforce the PAL.
- G.** PAL effective period and reopening of the PAL permit.

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1. PAL effective period. The Director shall specify a PAL effective period of 10 years.
2. Reopening of the PAL permit.
  - a. During the PAL effective period, the Director must reopen the PAL permit to:
    - i. Correct typographical/calculation errors made in setting the PAL or reflect a more accurate determination of emissions used to establish the PAL,
    - ii. Reduce the PAL if the owner or operator of the major source creates creditable emissions reductions for use as offsets under R18-2-404, and
    - iii. Revise the PAL to reflect an increase in the PAL as provided under subsection (J).
  - b. The Director shall have discretion to reopen the PAL permit for the following:
    - i. Reduce the PAL to reflect new federal applicable requirements with compliance dates after the PAL effective date;
    - ii. Reduce the PAL consistent with any other requirement, that is enforceable as a practical matter, and that the state may impose on the major source under the State Implementation Plan; and
    - iii. Reduce the PAL if the Director determines that a reduction is necessary to avoid causing or contributing to a violation of a national ambient air quality standard or a maximum increase allowed under R18-2-208, or to an adverse impact on an air quality related value that has been identified for a federal Class I area by a Federal Land Manager and for which information is available to the general public.
  - c. Except for the permit reopening in subsection (G)(2)(a)(i) for the correction of typographical/calculation errors that do not increase the PAL level, all other reopenings shall be carried out in accordance with the public participation requirements of subsection (D).
- H. Expiration of a PAL. Any PAL that is not renewed in accordance with the procedures in subsection (I) shall expire at the end of the PAL effective period, and the following requirements shall apply.
  1. Each emissions unit (or each group of emissions units) that existed under the PAL shall comply with an allowable emission limitation under a revised permit established according to the following procedures.
    - a. Within the time-frame specified for PAL renewals in subsection (I)(2), the major source shall submit a proposed allowable emission limitation for each emissions unit (or each group of emissions units, if such a distribution is more appropriate) by distributing the PAL allowable emissions for the major source among each of the emissions units that existed under the PAL. If the PAL had not yet been adjusted for an applicable requirement that became effective during the PAL effective period, as would be required under subsection (I)(5), such distribution shall be made as if the PAL had been adjusted.
  - b. The Director shall decide how the PAL allowable emissions will be distributed and issue a revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as the Director determines is appropriate.
- I. Renewal of a PAL.
  1. Each emissions unit(s) shall comply with the allowable emission limitation on a 12-month rolling basis. The Director may approve the use of monitoring systems (source testing, emission factors, etc.) other than CEMS, CERMS, PEMS, or CPMS to demonstrate compliance with the allowable emission limitation.
  2. Until the Director issues the revised permit incorporating allowable limits for each emissions unit, or each group of emissions units, as required under subsection (H)(1)(b), the source shall continue to comply with a source-wide, multi-unit emissions cap equivalent to the level of the PAL emission limitation.
  3. Any physical change or change in the method of operation at the major source will be subject to the nonattainment major NSR requirements if such change meets the definition of major modification.
  4. The major source owner or operator shall continue to comply with any applicable requirements that may have applied either during the PAL effective period or before the PAL effective period except for those emission limitations that had been established pursuant to R18-2-403(C) or R18-2-406(H), but were eliminated by the PAL in accordance with subsection (A)(2)(c).
  1. The Director shall follow the procedures specified in subsection (D) in approving any request to renew a PAL for a major source, and shall provide both the proposed PAL level and a written rationale for the proposed PAL level to the public for review and comment. During such public review, any person may propose a PAL level for the source for consideration by the Director.
  2. Application deadline. A major source owner or operator shall submit a timely application to the Director to request renewal of a PAL. A timely application is one that is submitted at least six months prior to, but not earlier than 18 months from, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.
  3. Application requirements. The application to renew a PAL permit shall contain the following information.
    - a. The information required in subsections (B)(1) through (3).
    - b. A proposed PAL level.
    - c. The sum of the potential to emit of all emissions units under the PAL (with supporting documentation).
    - d. Any other information the owner or operator wishes the Director to consider in determining the appropriate level for renewing the PAL.
  4. PAL adjustment. In determining whether and how to adjust the PAL, the Director shall consider the options outlined in subsections (I)(4)(a) and (b). However, in no case may any such adjustment fail to comply with subsection (I)(4)(c).
    - a. If the emissions level calculated in accordance with subsection (E) is equal to or greater than 80% of the PAL level, the Director may renew the PAL at the same level without considering the factors set forth in subsection (I)(4)(b); or
    - b. The Director may set the PAL at a level that the Director determines to be more representative of the source's baseline actual emissions, or that the Direc-

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tor determines to be more appropriate considering air quality needs, advances in control technology, anticipated economic growth in the area, desire to reward or encourage the source's voluntary emissions reductions, or other factors as specifically identified by the Director in the Director's written rationale.

- c. Notwithstanding subsections (I)(4)(a) and (b):
    - i. If the potential to emit of the major source is less than the PAL, the Director shall adjust the PAL to a level no greater than the potential to emit of the source; and
    - ii. The Director shall not approve a renewed PAL level higher than the current PAL, unless the PAL has been increased in accordance with subsection (J).
  5. If the compliance date for an applicable requirement that applies to the PAL source occurs during the PAL effective period, and if the Director has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or renewal of the source's Class I permit, whichever occurs first.
- J. Increasing a PAL during the PAL effective period.**
1. The Director may increase a PAL emission limitation only if the following requirements are met:
    - a. The owner or operator of the major source shall submit a complete application to request an increase in the PAL limit for a PAL major modification. Such application shall identify the emissions unit(s) contributing to the increase in emissions so as to cause the major source's emissions to equal or exceed its PAL.
    - b. As part of this application, the major source owner or operator shall demonstrate that the sum of the baseline actual emissions of the small emissions units, plus the sum of the baseline actual emissions of the significant and major emissions units assuming application of BACT or LAER equivalent controls, plus the sum of the PAL allowable emissions of the new or modified emissions unit(s) exceeds the PAL. The level of control that would result from BACT or LAER equivalent controls on each significant or major emissions unit shall be determined by conducting a new BACT or LAER analysis at the time the application is submitted, as applicable for the particular PAL pollutant, unless the emissions unit is currently required to comply with a BACT or LAER requirement that was established within the preceding 10 years. In such a case, the assumed control level for that emissions unit shall be equal to the level of BACT or LAER with which that emissions unit must currently comply.
    - c. The owner or operator obtains a major NSR permit for all emissions unit(s) identified in subsection (J)(1)(a), regardless of the magnitude of the emissions increase resulting from them (that is, no significant levels apply). These emissions unit(s) shall comply with any emissions requirements resulting from the major NSR process (for example, BACT), even though they have also become subject to the PAL or continue to be subject to the PAL.
    - d. The PAL permit shall require that the increased PAL level shall be effective on the day any emissions unit that is part of the PAL major modification becomes operational and begins to emit the PAL pollutant.
  2. The Director shall calculate the new PAL level as the sum of the PAL allowable emissions for each modified or new emissions unit, plus the sum of the baseline actual emissions of the significant and major emissions units (assuming application of BACT or LAER equivalent controls as determined in accordance with subsection (J)(1)(b), plus the sum of the baseline actual emissions of the small emissions units.
  3. The PAL permit shall be revised to reflect the increased PAL level pursuant to the public notice requirements of subsection (D).
- K. Monitoring requirements for PALs.**
1. General requirements.
    - a. Each PAL permit must contain enforceable requirements for the monitoring system that accurately determines plantwide emissions of the PAL pollutant in terms of mass per unit of time. Any monitoring system authorized for use in the PAL permit must be based on sound science and meet generally acceptable scientific procedures for data quality and manipulation. Additionally, the information generated by such system must meet minimum legal requirements for admissibility in a judicial proceeding to enforce the PAL permit.
    - b. The PAL monitoring system must employ one or more of the four general monitoring approaches meeting the minimum requirements set forth in subsections (K)(2)(a) through (d) and must be approved by the Director.
    - c. Notwithstanding subsection (K)(1)(b), the owner or operator may also employ an alternative monitoring approach if approved by the Director as meeting the requirements of subsection (K)(1)(a).
    - d. Failure to use a monitoring system that meets the requirements of this Section renders the PAL invalid.
  2. Minimum performance requirements for approved monitoring approaches. The following are acceptable general monitoring approaches when conducted in accordance with the minimum requirements in subsections (K)(3) through (9):
    - a. Mass balance calculations for activities using coatings or solvents,
    - b. CEMS,
    - c. CPMS or PEMS, and
    - d. Emission factors.
  3. Mass balance calculations. An owner or operator using mass balance calculations to monitor PAL pollutant emissions from activities using coating or solvents shall meet the following requirements:
    - a. Provide a demonstrated means of validating the published content of the PAL pollutant that is contained in or created by all materials used in or at the emissions unit;
    - b. Assume that the emissions unit emits all of the PAL pollutant that is contained in or created by any raw material or fuel used in or at the emissions unit, if it cannot otherwise be accounted for in the process; and
    - c. Where the vendor of a material or fuel, which is used in or at the emissions unit, publishes a range of pollutant content from such material, the owner or operator must use the highest value of the range to calculate the PAL pollutant emissions unless the Director determines there is site-specific data or a

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- site-specific monitoring program to support another content within the range.
4. CEMS. An owner or operator using CEMS to monitor PAL pollutant emissions shall meet the following requirements:
    - a. CEMS must comply with applicable Performance Specifications found in 40 CFR 60, Appendix B; and
    - b. CEMS must sample, analyze and record data at least every 15 minutes while the emissions unit is operating.
  5. CPMS or PEMS. An owner or operator using CPMS or PEMS to monitor PAL pollutant emissions shall meet the following requirements:
    - a. The CPMS or the PEMS must be based on current site-specific data demonstrating a correlation between the monitored parameter(s) and the PAL pollutant emissions across the range of operation of the emissions unit; and
    - b. Each CPMS or PEMS must sample, analyze, and record data at least every 15 minutes, or at another less frequent interval approved by the Director, while the emissions unit is operating.
  6. Emission factors. An owner or operator using emission factors to monitor PAL pollutant emissions shall meet the following requirements:
    - a. All emission factors shall be adjusted, if appropriate, to account for the degree of uncertainty or limitations in the factors' development;
    - b. The emissions unit shall operate within the designated range of use for the emission factor, if applicable; and
    - c. If technically practicable, the owner or operator of a significant emissions unit that relies on an emission factor to calculate PAL pollutant emissions shall conduct validation testing to determine a site-specific emission factor within six months of PAL permit issuance, unless the Director determines that testing is not required.
  7. A source owner or operator must record and report maximum potential emissions without considering enforceable emission limitations or operational restrictions for an emissions unit during any period of time that there is no monitoring data, unless another method for determining emissions during such periods is specified in the PAL permit.
  8. Notwithstanding the requirements in subsections (K)(3) through (7), where an owner or operator of an emissions unit cannot demonstrate a correlation between the monitored parameter(s) and the PAL pollutant emissions rate at all operating points of the emissions unit, the Director shall, at the time of permit issuance:
    - a. Establish default value(s) for determining compliance with the PAL based on the highest potential emissions reasonably estimated at such operating point(s), or
    - b. Determine that operation of the emissions unit during operating conditions when there is no correlation between monitored parameter(s) and the PAL pollutant emissions is a violation of the PAL.
  9. Re-validation. All data used to establish the PAL pollutant must be re-validated through performance testing or other scientifically valid means approved by the Director. Such testing must occur at least once every five years after issuance of the PAL.
- L. Recordkeeping requirements.**
1. The PAL permit shall require an owner or operator to retain a copy of all records necessary to determine compliance with any requirement of this Section and with the PAL, including a determination of each emissions unit's 12-month rolling total emissions, for five years from the date of such record.
  2. The PAL permit shall require an owner or operator to retain a copy of the following records for the duration of the PAL effective period plus five years:
    - a. A copy of the PAL permit application and any applications for revisions to the PAL, and
    - b. Each annual certification of compliance pursuant to R18-2-309(2) and the data relied on in certifying compliance.
- M. Reporting and notification requirements.** The owner or operator shall submit semi-annual monitoring reports and prompt deviation reports to the Director in accordance with R18-2-306(A)(5). The reports shall meet the following requirements:
1. Semi-annual report. The semi-annual report shall be submitted to the Director within 30 days of the end of each reporting period. This report shall contain the following information:
    - a. The identification of owner and operator and the permit number.
    - b. Total annual emissions (tons/year) based on a 12-month rolling total for each month in the reporting period recorded pursuant to subsection (L)(1).
    - c. All data relied upon, including, but not limited to, any Quality Assurance or Quality Control data, in calculating the monthly and annual PAL pollutant emissions.
    - d. A list of any emissions units modified or added to the major source during the preceding six-month period.
    - e. The number, duration, and cause of any deviations or monitoring malfunctions (other than the time associated with zero and span calibration checks), and any corrective action taken.
    - f. A notification of a shutdown of any monitoring system, whether the shutdown was permanent or temporary, the reason for the shutdown, the anticipated date that the monitoring system will be fully operational or replaced with another monitoring system, and whether the emissions unit monitored by the monitoring system continued to operate, and the calculation of the emissions of the pollutant or the number determined by method included in the permit, as provided by subsection (K)(7).
    - g. A certification by the responsible official consistent with R18-2-304(I).
  2. Deviation report. The major source owner or operator shall promptly submit reports of any deviations or exceedance of the PAL permit requirements, including periods where no monitoring is available, in accordance with R18-2-306(A)(5). The reports shall contain the following information:
    - a. The identification of owner and operator and the permit number,
    - b. The PAL permit requirement that experienced the deviation or that was exceeded,
    - c. Emissions resulting from the deviation or the exceedance, and
    - d. A certification by the responsible official consistent with R18-2-304(I).
  3. Re-validation results. The owner or operator shall submit to the Director the results of any re-validation test or

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method within three months after completion of such test or method.

**Historical Note**

New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**ARTICLE 5. GENERAL PERMITS****R18-2-501. Applicability**

- A.** The Director may issue general permits for a facility class that contains 10 or more facilities that are similar in nature, have substantially similar emissions, and would be subject to the same or substantially similar requirements governing operations, emissions, monitoring, reporting, or recordkeeping. "Similar in nature" refers to facility size, processes, and operating conditions.
- B.** The Director may issue general permits, in accordance with subsection (A), with emission limitations, controls, or other requirements that meet the requirements of R18-2-306.01. A source that seeks to vary from such a general permit, and obtain an emission limitation, control, or other requirement not contained in that general permit, shall apply for a permit pursuant to Article 3 of this Chapter.
- C.** General permits shall not be issued for affected sources except as provided in regulations promulgated by the Administrator under Title IV of the Act.
- D.** Unless otherwise stated, the provisions of Article 3 shall apply to general permits.

**Historical Note**

Former Section R18-2-501 renumbered to R18-2-502, new Section R18-2-501 adopted effective September 26, 1990 (Supp. 90-3). Former Section R18-2-501 renumbered to R18-2-701; new Section adopted effective November 15, 1993 (Supp. 93-4). Amended effective August 1, 1995 (Supp. 95-3).

**R18-2-502. General Permit Development**

- A.** The Director may issue a general permit on the Director's own initiative or in response to a petition.
- B.** Any person may submit a petition to the Director requesting the issuance of a general permit for a defined class of facilities. The petition shall propose a particular class of facilities, and list the approximate number of facilities in the proposed class along with their size, processes, and operating conditions, and demonstrate how the class meets the criteria for a general permit as specified in R18-2-501 and A.R.S. § 49-426(H). The Director shall provide a written response to the petition within 120 days of receipt.
- C.** General permits shall be issued for classes of facilities using the same engineering principles that applies to permits for individual sources and following the public notice requirements of R18-2-504.
- D.** General permits shall include all of the following:
1. All elements required by R18-2-306(A) except R18-2-306(A)(2)(b) and (6).
  2. The process for individual sources to apply for coverage under the general permit.
- E.** General permits may include conditions imposed under R18-2-515.

**Historical Note**

Former Section R9-3-501 repealed, new Section R9-3-501 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended

subsection (D) effective June 19, 1981 (Supp. 81-3). Amended subsections (C) and (D) effective February 2, 1982 (Supp. 82-1). Amended subsection (D) effective May 25, 1982 (Supp. 82-3). Former Section R9-3-501 renumbered without change as Section R18-2-501 (Supp. 87-3). Former Section R18-2-502 repealed, new Section R18-2-502 renumbered from R18-2-501 and amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-502 renumbered to R18-2-702; new Section R18-2-502 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-503. Application for Coverage under General Permit**

- A.** Once the Director has issued a general permit, any source which is a member of the class of facilities covered by the general permit may apply to the Director for authority to operate under the general permit. At the time the Director issues a general permit, the Director may also establish a specific application form with filing instructions for sources in the category covered by the general permit. Applicants shall complete the specific application form or, if a specific form has not been adopted, the standard application form provided under R18-2-304(B). The specific application form shall, at a minimum, require the applicant to submit the following information:
1. Information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine qualification for, and to assure compliance with, the general permit.
  2. A compliance plan that meets the requirements of R18-2-514.
- B.** For sources required to obtain a permit under Title V of the Act, the Director shall provide the Administrator with a permit application summary form and any relevant portion of the permit application and compliance plan. To the extent possible, this information shall be provided in computer-readable format compatible with the Administrator's national database management system.
- C.** The Director shall act on the application for coverage under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time. The Director may defer acting on an application under this subsection (if) the Director has provided notice of intent to renew or not renew the permit.
- D.** The Director shall deny an application for coverage from any Class I source that is subject to case-by-case standards or requirements.
- E.** Upon notification from the Director of the availability of a web portal to apply for and obtain a general permit, an applicant shall file all applications and conduct all transactions related to the general permit through the portal.

**Historical Note**

Former Section R9-3-503 repealed, new Section R9-3-503 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (6) effective June 19, 1981 (Supp. 81-3). Amended subsection (C) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-503 renumbered without change as Section R18-2-503 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-503 renumbered to R18-2-703; new Section R18-2-503 adopted effective November 15,

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1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-504. Public Notice**

- A.** This Section applies to issuance, revision, or renewal of a general permit.
- B.** The Director shall provide public notice for any proposed new general permit, for any revision of an existing general permit, and for renewal of an existing general permit.
- C.** The Director shall publish notice of the proposed general permit once each week for two consecutive weeks in a newspaper of general circulation in each county and shall provide at least 30 days from the date of the first notice for public comment. The notice shall describe the following:
  1. The proposed permit;
  2. The category of sources that would be affected;
  3. The air contaminants which the Director expects to be emitted by a typical facility in the class and the class as a whole;
  4. The Director's proposed actions and effective date for the actions;
  5. Locations where documents relevant to the proposed permit will be available during normal business hours;
  6. The name, address, and telephone number of a person within the Department who may be contacted for further information;
  7. The address where any person may submit comments or request a public hearing and the date and time by which comments or a public hearing request are required to be received;
  8. The process by which sources may obtain authorization to operate under the general permit.
- D.** A copy of the notice required by subsection (C), shall be sent to the Administrator through the appropriate regional office, and to all other state and local air pollution control agencies in the state. The notice shall also be sent to any other agency in the state having responsibility for implementing the procedures required under 40 CFR 51, I. For general permits under which operation may be authorized in lieu of Class I permits, the Director shall provide the proposed final permit to the Administrator after public and affected state review. No Class I permit shall be issued if the Administrator properly objects to its issuance in writing within 45 days from receipt of the proposed final permit and any necessary supporting information from the Director.
- E.** By no later than the date notice is first published under subsection (A), the Department shall make copies of the following materials available at a public location in each county and at each Department office:
  1. The proposed general permit;
  2. The Department's analysis in support of the grant of the general permit;
  3. All other materials available to the Director that are relevant to the permit decision.
- F.** Written comments to the Director shall include the name of the person and the person's agent or attorney and shall clearly set forth reasons why the general permit should or should not be issued pursuant to the criteria for issuance in A.R.S. §§ 49-426 and 49-427 and this Chapter.
- G.** At the time a general permit is issued, the Director shall make available a response to all relevant comments on the proposed permit raised during the public comment period and during any requested public hearing. The response shall specify which provisions, if any, of the proposed permit have been changed and the reason for the changes. The Director shall

also notify in writing any petitioner and each person who has submitted written comments on the proposed general permit or requested notice of the final permit decision.

**Historical Note**

Former Section R9-3-504 repealed, new Section R9-3-504 adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-504 renumbered without change as Section R18-2-504 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-504 renumbered to R18-2-704; new Section R18-2-504 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-505. General Permit Renewal**

- A.** The Director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall coincide with the term of the general permit regardless of when the authorization began during the five-year period, except as provided in R18-2-510(C). In addition to the public notice required to issue a proposed permit under R18-2-504, the Director shall notify in writing all sources who have been granted, or who have applications pending for, authorization to operate under the permit. The written notice shall describe the source's duty to reapply and may include requests for information required under the proposed permit.
- B.** At the time a general permit is renewed, the Director shall notify in writing all sources who were granted coverage under the previous permit and shall require them to submit a timely renewal application. For purposes of general permits, a timely application is one that is submitted within the time-frame specified by the Director in the written notification. Until such time that a timely application is submitted, the source shall continue to comply with the previously issued general permit coverage. Upon submittal of a timely application, the source shall comply with the renewed permit. Failure to submit a timely application terminates the source's right to operate.

**Historical Note**

Former Section R9-3-1007 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-505 repealed, new Section R9-3-505 adopted effective May 14, 1979 (Supp. 79-1). Editorial corrections, subsection (B), paragraph (5), and subsection (D), paragraph (1), subparagraph (d) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-505 renumbered without change as Section R18-2-505 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-505 renumbered to R18-2-705; new Section R18-2-505 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-506. Relationship to Individual Permits**

Any source covered under a general permit may request to be excluded from coverage by applying for an individual source permit. Coverage under the general permit shall terminate on the date the individual permit is issued.

**Historical Note**

Former Section R9-3-1008 renumbered effective January 13, 1976 (Supp. 76-1). Former Section R9-3-506 repealed, new Section R9-3-506 adopted effective May

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14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (C), paragraph (1) effective June 19, 1981 (Supp. 81-3). Former Section R9-3-506 renumbered without change as Section R18-2-506 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-506 renumbered to R18-2-706; new Section R18-2-506 adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-507. Repealed**

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-507 renumbered without change as Section R18-2-507 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-507 renumbered to R18-2-707; new Section R18-2-507 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 1953, effective January 1, 2007 (Supp. 06-2). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-508. Repealed**

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (B) effective May 28, 1982 (Supp. 82-3). Amended subsection (B) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-508 renumbered without change as Section R18-2-508 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-508 renumbered to R18-2-708; new Section R18-2-508 adopted effective November 15, 1993 (Supp. 93-4). Repealed by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-509. General Permit Appeals**

Any person who filed a comment on a proposed general permit as provided in R18-2-504 may appeal the terms and conditions of the general permit, as they apply to the facility class covered under a general permit, by filing an appeal with the Office of Administrative Hearings within 30 days after receipt of notice that the general permit has been issued.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-509 renumbered without change as Section R18-2-509 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-509 renumbered to R18-2-709; new Section R18-2-509 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4698, effective February 3, 2007 (Supp. 06-4).

**R18-2-510. Terminations of General Permits and Revocations of Authority to Operate under a General Permit**

- A. The Director may terminate a general permit at any time if:
  1. The Director has determined that the emissions from the sources in the facility class cause or contribute to ambient air quality standard violations which are not adequately addressed by the requirements in the general permit, or
  2. The Director has determined that the terms and conditions of the general permit no longer meet the requirements of A.R.S. §§ 49-426 and 49-427.

- B. The Director shall provide written notice to all sources operating under a general permit prior to termination of a general permit. Such notice shall include an explanation of the basis for the proposed action. Within 180 days of receipt of the notice of the expiration, termination or cancellation of any general permit, sources notified shall submit an application to the Director for an individual permit.
- C. The Director may require a source authorized to operate under a general permit to apply for and obtain an individual source permit at any time if the source is not in compliance with the terms and conditions of the general permit.
- D. If the Director revokes a source's authority to operate under a general permit pursuant to subsection (C), the Director shall notify the permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the revocation of authority and a statement that the permittee is entitled to a hearing. A source previously authorized to operate under a general permit may operate under the terms of the general permit until the earlier of the date it submits a complete application for an individual permit, at which time it may operate under that application, or 180 days after receipt of the notice of revocation of authority to operate under the general permit.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsections (E)(3) and (E)(4) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-510 renumbered without change as Section R18-2-510 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-510 renumbered to R18-2-710; new Section R18-2-510 adopted effective November 15, 1993 (Supp. 93-4).

**R18-2-511. Fees Related to General Permits**

- A. Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of each application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B. Administrative or Inspection Fee. The owner or operator of a source required to have a general permit, that has undergone initial startup by January 1, shall pay, for each calendar year, the applicable administrative or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$750
Other Class II Title V General Permits	\$4,520
	<b>Inspection Fee</b>
Class II Non-Title V Crematories	\$1,500
Other Class II Non-Title V General Permits	\$3,020

**Historical Note**

Former Section R18-2-511 renumbered to R18-2-711;

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new Section R18-2-511 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 5670, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 10 A.A.R. 4767, effective November 4, 2004 (Supp. 04-4). Amended by final rulemaking at 13 A.A.R. 4379, effective December 4, 2007 (Supp. 07-4).

**R18-2-512. Changes to Facilities Granted Coverage under General Permits**

- A.** This Section applies to changes made at a facility that has been granted coverage under a general permit.
- B.** Facility Changes that Require New Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source requests new authorization to operate from the Director:
1. Adding new emissions units that require new authorization to operate,
  2. Installing replacement emissions units that require authorization to operate.
- C.** Facility Changes that Do Not Require Authorization to Operate. The following changes at a source that has been granted coverage under a general permit shall be made only after the source provides notification to the Department:
1. Adding new emissions units that do not require authorization to operate,
  2. Installing a replacement emissions unit with a higher capacity that does not require authorization to operate,
  3. Adding or replacing air pollution control equipment.
- D.** A source that has been granted coverage under a general permit shall keep a record of any physical change or change in the method of operation that could affect emissions. The record shall include a description of the change and the date the change occurred.
- E.** For sources that submit a request or notification under subsection (B) or (C), the applicant shall provide information identifying and describing the source, its processes, and operating conditions in sufficient detail to allow the Director to determine continued qualification for, and to assure compliance with, the general permit. The Director shall act on a request for new authority to operate under a general permit as expeditiously as possible. The source may operate under the terms of the applicable general permit during that time.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-512 renumbered without change as Section R18-2-512 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-712 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-513. Portable Sources Covered under a General Permit**

- A.** This Section applies to sources that have been granted coverage under a general permit that allows for the operation of a source at more than one location.
- B.** General permits developed by the Director for portable sources shall contain conditions that assure compliance with all applicable requirements at all authorized locations.
- C.** Owners and operators that hold multiple coverages under the same general permit:

1. Shall have separate coverage under the general permit for each location at which each portable source operates.
  2. Until the Director notifies permittees of the availability of a web portal under R18-2-503(E), may move equipment between portable sources without obtaining a new authorization to operate. At no time shall an owner or operator move equipment to a portable source if the move would cause emissions from the portable source to exceed emission limitations in the general permit. Equipment from a portable source covered by one general permit shall not be moved to a portable source covered by a different general permit, unless the owner or operator obtains a new authorization to operate under the general permit covering the new location.
  3. After the Director notifies permittees of the availability of a web portal under R18-2-503(E), must use the portal to obtain authorizations to operate for each location at which the equipment will operate.
- D.** A portable source that will operate for the duration of its permit solely in one county that has established a local air pollution control program pursuant to A.R.S. § 49-479 shall obtain a permit from that county. A portable source with a county permit shall not operate in any other county. A portable source that has been granted coverage under a general permit that subsequently obtains a county permit shall request that the Director terminate the coverage under the general permit. Upon issuance of the county permit, the coverage under the general permit issued by the Director is no longer valid.
- E.** A portable source which has a county permit but proposes to operate outside that county may obtain coverage under a general permit from the Director. A portable source that has a permit issued by a county and obtains coverage under a general permit issued by the Director shall request that the county terminate the permit. Upon issuance of coverage under a general permit by the Director, the county permit is no longer valid. Before commencing operation in the new county, the source shall notify the Director and the control officer who has jurisdiction in the county that includes the new location according to subsection (F).
- F.** A portable source granted coverage under a general permit may be transferred from one location to another provided that the owner or operator of the portable source notifies the Director and any control officer who has jurisdiction over the geographic area that includes the new location of the transfer prior to the transfer. The notification required under this subsection (shall) include:
1. A description of the equipment to be transferred including the permit number and as appropriate the Authorization-to-Operate number for each piece of equipment;
  2. A description of the present location;
  3. A description of the new location;
  4. The date on which the equipment is to be moved;
  5. The date on which operation of the equipment will begin at the new location;
  6. A complete list of all equipment requiring authorization to operate that may be located at the new location; and
  7. Revised emissions calculations demonstrating that the equipment at the new location continues to qualify for the general permit under which the portable source has coverage.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (2) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3).

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Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-513 renumbered without change as Section R18-2-513 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-713 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-514. General Permit Compliance Certification**

- A.** A compliance certification submitted by the owner or operator of a stationary source covered by a general permit shall be on a form provided by the Director and shall include the following information:
1. The source's name, mailing address, contact person and contact person phone number, permit number, compliance reporting period, and physical address and location, if different than the mailing address.
  2. A certification of truth, accuracy, and completeness signed by the facility's responsible officer.
  3. Process information for the source, including design capacity, operations schedule, hours of operation, and total production.
  4. Method of documenting compliance and the status of compliance with all recordkeeping, reporting, monitoring, and testing requirements and all emission limitations and standards imposed in the permit.
- B.** Upon notification from the Director of the availability of a web portal to complete and submit a compliance certification, the owner or operator shall complete and submit all compliance certifications through the portal.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-514 renumbered without change as Section R18-2-514 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-714 effective November 14, 1993 (Supp. 93-4). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-515. Minor NSR in General Permits**

- A.** A general permit may include emission standards designed to assure that a stationary source covered by the permit will comply with minor new source review under R18-2-334(C). The emission standards may consist of any combination of the following:
1. Limits designed to assure that emissions from a stationary source that is a member of the class of facilities covered by the permit will not interfere with attainment or maintenance of a NAAQS.
  2. Limits imposing reasonably available control technology.
- B.** Except as provided in subsection (C), if a general permit includes emission standards under subsection (A), then any stationary source that is a member of the class of facilities covered by the permit or any minor NSR modification to such a source may comply with R18-2-334 by obtaining coverage under the permit.
- C.** An owner or operator seeking coverage under a general permit in order to obtain authorization to construct or make a minor NSR modification to a stationary source shall instead apply for an individual permit, if the Department determines there is reason to believe the source or modification could interfere with attainment or maintenance of any national ambient air

quality standard. In making this determination, the Department:

1. Shall consider the factors in R18-2-334(E)(1) to (6).
2. Shall consider whether the dispersion characteristics of the source are likely to result in higher ambient concentrations of a conventional pollutant than the modeling assumptions used to establish an emission standard under subsection (A)(1).
3. May apply a screening model to the source's emissions.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Section R9-3-515 will be repealed and new Section R9-3-515 adopted effective following the adoption of Article 7. Nonferrous Smelter Orders, filed September 18, 1979 for public hearing (Supp. 79-5). Section R9-3-515 adopted effective May 14, 1979, amended effective October 2, 1979 (Supp. 79-5). Article 7. Nonferrous Smelter Orders adopted effective January 8, 1980. Section R9-3-515 filed September 18, 1979 for public hearing and effective following the adoption of Article 7 now amended and effective January 8, 1980 (Supp. 80-1). Amended as an emergency effective March 6, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-2). Emergency adoption effective March 6, 1980 now adopted and amended effective July 9, 1980. Amended subsection (C), paragraph (1) effective August 29, 1980 (Supp. 80-4). Amended as an emergency effective October 9, 1980, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 80-5). Former emergency adoption effective October 9, 1980, now adopted and amended effective June 19, 1981 (Supp. 81-3). Amended subsection (B), paragraph (1) effective February 2, 1982 (Supp. 82-1). Amended effective May 25, 1982 (Supp. 82-3). Amended subsections ((C)(3) and (C)(5) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-515 renumbered without change as Section R18-2-515 (Supp. 87-3). Section amended and subsections (C)(1)(h) through (C)(7) renumbered to R18-2-515.01 and subsections (C)(8) through (C)(9) renumbered to R18-2-515.02 effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715 effective November 15, 1993 (Supp. 93-4). New Section made by final rulemaking at 23 A.A.R. 333, effective March 21, 2017 (Supp. 17-1).

**R18-2-515.01. Renumbered****Historical Note**

Section R18-2-515.01 renumbered from R18-2-515(C)(1)(h) through (C)(7) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.01 effective November 15, 1993 (Supp. 93-4).

**R18-2-515.02. Renumbered****Historical Note**

R18-2-515.02 renumbered from R18-2-515(C)(8) through (C)(9) and amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-715.02 effective November 15, 1993 (Supp. 93-4).

**R18-2-516. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4) Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-4). For-

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mer Section R9-3-516 renumbered without change as Section R18-2-516 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-716 effective November 15, 1993 (Supp. 93-4).

**R18-2-517. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (C), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-517 renumbered without change as Section R18-2-517 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-717 effective November 15, 1993 (Supp. 93-4).

**R18-2-518. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended effective September 22, 1983 (Supp. 83-4). Former Section R9-3-518 renumbered without change as Section R18-2-518 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-718 effective November 15, 1993 (Supp. 93-4).

**R18-2-519. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (A), paragraph (1) (Supp. 80-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-519 renumbered without change as Section R18-2-519 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-719 effective November 15, 1993 (Supp. 93-4).

**R18-2-520. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Editorial correction, subsection (A), paragraph (1) (Supp. 80-2). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-520 renumbered without change as Section R18-2-520 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-720 effective November 15, 1993 (Supp. 93-4).

**R18-2-521. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-521 renumbered without change as Section R18-2-521 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-721

effective November 15, 1993 (Supp. 93-4).

**R18-2-522. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective May 28, 1982 (Supp. 82-3). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-522 renumbered without change as Section R18-2-522 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-722 effective November 15, 1993 (Supp. 93-4).

**R18-2-523. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-523 renumbered without change as Section R18-2-523 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-2). Renumbered to R18-2-723 effective November 15, 1993 (Supp. 93-4).

**R18-2-524. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Amended subsection (A) effective September 22, 1983 (Supp. 83-5). Former Section R9-3-524 renumbered without change as Section R18-2-524 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-724 effective November 15, 1993 (Supp. 93-4).

**R18-2-525. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Editorial correction, subsection (B) (Supp. 79-6). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-525 renumbered without change as Section R18-2-525 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-725 effective November 15, 1993 (Supp. 93-4).

**R18-2-526. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-526 renumbered without change as Section R18-2-526 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-726 effective November 15, 1993 (Supp. 93-4).

**R18-2-527. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-527 renumbered without change as Section R18-2-527 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-727 effective November 15, 1993 (Supp. 93-4).

**R18-2-528. Renumbered****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective July 9, 1980 (Supp. 80-4). Former Section R9-3-528 renumbered without change as Section R18-2-528 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-728 effective

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November 15, 1993 (Supp. 93-4).

**R18-2-529. Renumbered****Historical Note**

Adopted effective September 22, 1983 (Supp. 83-5). Former Section R9-3-529 renumbered without change as Section R18-2-529 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-729 effective November 15, 1993 (Supp. 93-4).

**R18-2-530. Renumbered****Historical Note**

Adopted effective September 26, 1990 (Supp. 90-3). Renumbered to R18-2-730 effective November 15, 1993 (Supp. 93-4).

**ARTICLE 6. EMISSIONS FROM EXISTING AND NEW NONPOINT SOURCES****R18-2-601. General**

For purposes of this Article, any source of air contaminants which due to lack of an identifiable emission point or plume cannot be considered a point source, shall be classified as a nonpoint source. In applying this criteria, such items as air-curtain destructors, heater-planners, and conveyor transfer points shall be considered to have identifiable plumes. Any affected facility subject to regulation under Article 7 of this Chapter or Title 18, Chapter 2, Article 9, shall not be subject to regulation under this Article.

**Historical Note**

Former Section R9-3-601 repealed, new Section R9-3-601 adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-601 renumbered without change as Section R18-2-601 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-601 renumbered to R18-2-801, new Section R18-2-601 renumbered from R18-2-401 and amended effective November 15, 1993 (Supp. 93-4). Section updated to reflect corrected citation reference (Supp. 08-1).

**R18-2-602. Unlawful Open Burning**

A. In addition to the definitions contained in A.R.S. § 49-501, in this Section:

1. "Agricultural burning" means burning vegetative materials related to producing and harvesting crops and raising animals for the purpose of marketing for profit, or providing a livelihood, but does not include burning of household waste or prohibited materials. A person may conduct agricultural burns in fields, piles, ditch banks, fence rows, or canal laterals for purposes such as weed control, waste disposal, disease and pest prevention, or site preparation.
2. "Approved waste burner" means an incinerator constructed of fire resistant material with a cover or screen that is closed when in use, and has openings in the sides or top no greater than one inch in diameter.
3. "Class I Area" means any one of the Arizona mandatory federal Class I areas defined in A.R.S. § 49-401.01.
4. "Construction burning" means burning wood or vegetative material from land clearing, site preparation, or fabrication, erection, installation, demolition, or modification of any buildings or other land improvements, but does not include burning household waste or prohibited material.
5. "Dangerous material" means any substance or combination of substances that is capable of causing bodily harm or property loss unless neutralized, consumed, or otherwise disposed of in a controlled and safe manner.
6. "Delegated authority" means any of the following:

- a. A county, city, town, air pollution control district, or fire district that has been delegated authority to issue open burning permits by the Director under A.R.S. § 49-501(E); or
  - b. A private fire protection service provider that has been assigned authority to issue open burning permits by one of the authorities in subsection (A)(6)(a).
7. "Director" means the Director of the Department of Environmental Quality, or designee.
  8. "Emission reduction techniques" means methods for controlling emissions from open outdoor fires to minimize the amount of emissions output per unit of area burned.
  9. "Flue," as used in this Section, means any duct or passage for air or combustion gases, such as a stack or chimney.
  10. "Household waste" means any solid waste including garbage, rubbish, and sanitary waste from a septic tank that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas, but does not include construction debris, landscaping rubble, or demolition debris.
  11. "Independent authority to permit fires" means the authority of a county to permit fires by a rule adopted under Arizona Revised Statutes, Title 49, Chapter 3, Article 3, and includes only Maricopa, Pima, and Pinal counties.
  12. "Open outdoor fire or open burning" means the combustion of material of any type, outdoors and in the open, where the products of combustion are not directed through a flue. Open outdoor fires include agricultural, residential, prescribed, and construction burning, and fires using air curtain destructors.
  13. "Prohibited materials" means nonpaper garbage from the processing, storage, service, or consumption of food; chemically treated wood; lead-painted wood; linoleum flooring, and composite counter-tops; tires; explosives or ammunition; oleanders; asphalt shingles; tar paper; plastic and rubber products, including bottles for household chemicals; plastic grocery and retail bags; waste petroleum products, such as waste crankcase oil, transmission oil, and oil filters; transformer oils; asbestos; batteries; anti-freeze; aerosol spray cans; electrical wire insulation; thermal insulation; polyester products; hazardous waste products such as paints, pesticides, cleaners and solvents, stains and varnishes, and other flammable liquids; plastic pesticide bags and containers; and hazardous material containers including those that contained lead, cadmium, mercury, or arsenic compounds.
  14. "Residential burning" means open burning of vegetative materials conducted by or for the occupants of residential dwellings, but does not include burning household waste or prohibited material.
  15. "Prescribed burning" has the same meaning as in R18-2-1501.
- B.** Unlawful open burning. Notwithstanding any other rule in this Chapter, a person shall not ignite, cause to be ignited, permit to be ignited, allow, or maintain any open outdoor fire in a county without independent authority to permit fires except as provided in A.R.S. § 49-501 and this Section.
- C.** Open outdoor fires exempt from a permit. The following fires do not require an open burning permit from the Director or a delegated authority:
1. Fires used only for:
    - a. Cooking of food,
    - b. Providing warmth for human beings,

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- c. Recreational purposes,
  - d. Branding of animals,
  - e. Orchard heaters for the purpose of frost protection in farming or nursery operations, and
  - f. The proper disposal of flags under 4 U.S.C. 1, § 8.
2. Any fire set or permitted by any public officer in the performance of official duty, if the fire is set or permission given for the following purpose:
    - a. Control of an active wildfire; or
    - b. Instruction in the method of fighting fires, except that the person setting these fires must comply with the reporting requirements of subsection (D)(3)(f).
  3. Fire set by or permitted by the Director of Department of Agriculture for the purpose of disease and pest prevention in an organized, area-wide control of an epidemic or infestation affecting livestock or crops.
  4. Prescribed burns set by or assisted by the federal government or any of its departments, agencies, or agents, or the state or any of its agencies, departments, or political subdivisions, regulated under Article 15 of this Chapter.
- D. Open outdoor fires requiring a permit.**
1. The following open outdoor fires are allowed with an open burning permit from the Director or a delegated authority:
    - a. Construction burning;
    - b. Agricultural burning;
    - c. Residential burning;
    - d. Prescribed burns conducted on private lands without the assistance of a federal or state land manager as defined under R18-2-1501;
    - e. Any fire set or permitted by a public officer in the performance of official duty, if the fire is set or permission given for the purpose of weed abatement, or the prevention of a fire hazard, unless the fire is exempt from the permit requirement under subsection (C)(3);
    - f. Open outdoor fires of dangerous material under subsection (E);
    - g. Open outdoor fires of household waste under subsection (F); and
    - h. Open outdoor fires that use an air curtain destructor, as defined in R18-2-101.
  2. A person conducting an open outdoor fire in a county without independent authority to permit fires shall obtain a permit from the Director or a delegated authority unless exempted under subsection (C). Permits may be issued for a period not to exceed one year. A person shall obtain a permit by completing an ADEQ-approved application form.
  3. Open outdoor fire permits issued under this Section shall include:
    - a. A list of the materials that the permittee may burn under the permit;
    - b. A means of contacting the permittee authorized by the permit to set an open fire in the event that an order to extinguish the open outdoor fire is issued by the Director or the delegated authority;
    - c. A requirement that burns be conducted during the following periods, unless otherwise waived or directed by the Director on a specific day basis:
      - i. Year-round: ignite fire no earlier than one hour after sunrise; and
      - ii. Year-round: extinguish fire no later than two hours before sunset;
    - d. A requirement that the permittee conduct all open burning only during atmospheric conditions that:
      - i. Prevent dispersion of smoke into populated areas;
      - ii. Prevent visibility impairment on traveled roads or at airports that result in a safety hazard;
      - iii. Do not create a public nuisance or adversely affect public safety;
      - iv. Do not cause an adverse impact to visibility in a Class I area; and
      - v. Do not cause uncontrollable spreading of the fire;
    - e. A list of the types of emission reduction techniques that the permittee shall use to minimize fire emissions.;
    - f. A reporting requirement that the permittee shall meet by providing the following information in a format provided by the Director for each date open burning occurred, on either a daily basis on the day of the fire, or an annual basis in a report to the Director or delegated authority due on March 31 for the previous calendar year:
      - i. The date of each burn;
      - ii. The type and quantity of fuel burned for each date open burning occurred;
      - iii. The fire type, such as pile or pit, for each date open burning occurred; and
      - iv. For each date open burning occurred, the legal location, to the nearest section, or latitude and longitude, to the nearest degree minute, or street address for residential burns;
    - g. A requirement that the person conducting the open burn notify the local fire-fighting agency or private fire protection service provider, if the service provider is a delegated authority, before burning. If neither is in existence, the person conducting the burn shall notify the state forester.;
    - h. A requirement that the permittee start each open outdoor fire using items that do not cause the production of black smoke;
    - i. A requirement that the permittee attend the fire at all times until it is completely extinguished;
    - j. A requirement that the permittee provide fire extinguishing equipment on-site for the duration of the burn;
    - k. A requirement that the permittee ensure that a burning pit, burning pile, or approved waste burner be at least 50 feet from any structure;
    - l. A requirement that the permittee have a copy of the burn permit on-site during open burning;
    - m. A requirement that the permittee not conduct open burning when an air stagnation advisory, as issued by the National Weather Service, is in effect in the area of the burn or during periods when smoke can be expected to accumulate to the extent that it will significantly impair visibility in Class I areas;
    - n. A requirement that the permittee not conduct open burning when any stage air pollution episode is declared under R18-2-220;
    - o. A statement that the Director, or any other public officer, may order that the burn be extinguished or prohibit burning during periods of inadequate smoke dispersion, excessive visibility impairment, or extreme fire danger; and
    - p. A list of the activities prohibited and the criminal penalties provided under A.R.S. § 13-1706.
  4. The Director or a delegated authority shall not issue an open burning permit under this Section:

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- a. That would allow burning prohibited materials other than under a permit for the burning of dangerous materials;
- b. If the applicant has applied for a permit under this Section to burn a dangerous material which is also hazardous waste under 40 CFR 261, but does not have a permit to burn hazardous waste under 40 CFR 264, or is not an interim status facility allowed to burn hazardous waste under 40 CFR 265; or
- c. If the burning would occur at a solid waste facility in violation of 40 CFR 258.24 and the Director has not issued a variance under A.R.S. § 49-763.01.
- E.** Open outdoor fires of dangerous material. A fire set for the disposal of a dangerous material is allowed by the provisions of this Section, when the material is too dangerous to store and transport, and the Director has issued a permit for the fire. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The Director shall permit fires for the disposal of dangerous materials only when no safe alternative method of disposal exists, and burning the materials does not result in the emission of hazardous or toxic substances either directly or as a product of combustion in amounts that will endanger health or safety.
- F.** Open outdoor fires of household waste. An open outdoor fire for the disposal of household waste is allowed by provisions of this Section when permitted in writing by the Director or a delegated authority. A permit issued under this subsection shall contain all provisions in subsection (D)(3) except for subsections (D)(3)(e) and (D)(3)(f). The permittee shall conduct open outdoor fires of household waste in an approved waste burner and shall either:
1. Burn household waste generated on-site on farms or ranches of 40 acres or more where no household waste collection or disposal service is available; or
  2. Burn household waste generated on-site where no household waste collection and disposal service is available and where the nearest other dwelling unit is at least 500 feet away.
- G.** Permits issued by a delegated authority. The Director may delegate authority for the issuance of open burning permits to a county, city, town, air pollution control district, or fire district. A delegated authority may not issue a permit for its own open burning activity. The Director shall not delegate authority to issue permits to burn dangerous material under subsection (E). A county, city, town, air pollution control district, or fire district with delegated authority from the Director may assign that authority to one or more private fire protection service providers that perform fire protection services within the county, city, town, air pollution control district, or fire district. A private fire protection provider shall not directly or indirectly condition the issuance of open burning permits on the applicant being a customer. Permits issued under this subsection shall comply with the requirements in subsection (D)(3) and be in a format prescribed by the Director. Each delegated authority shall:
1. Maintain a copy of each permit issued for the previous five years available for inspection by the Director;
  2. For each permit currently issued, have a means of contacting the person authorized by the permit to set an open fire if an order to extinguish open burning is issued; and
  3. Annually submit to the Director by May 15 a record of daily burn activity, excluding household waste burn permits, on a form provided by the Director for the previous calendar year containing the information required in subsections (D)(3)(e) and (D)(3)(f).
- H.** The Director shall hold an annual public meeting for interested parties to review operations of the open outdoor fire program and discuss emission reduction techniques.
- I.** Nothing in this Section is intended to permit any practice that is a violation of any statute, ordinance, rule, or regulation.
- Historical Note**  
Adopted effective May 14, 1979 (Supp. 79-1). Amended effective October 2, 1979 (Supp. 79-5). Correction, subsection (C) repealed effective October 2, 1979, not shown (Supp. 80-1). Former Section R9-3-602 renumbered without change as Section R18-2-602 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-602 renumbered to R18-2-802, new Section R18-2-602 renumbered from R18-2-401 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).
- R18-2-603. Repealed**
- Historical Note**  
Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-603 renumbered without change as Section R18-2-603 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-603 renumbered to R18-2-803, new Section R18-2-603 renumbered from R18-2-403 effective November 15, 1993 (Supp. 93-4). Repealed effective October 8, 1996 (Supp. 96-4).
- R18-2-604. Open Areas, Dry Washes, or Riverbeds**
- A.** No person shall cause, suffer, allow, or permit a building or its appurtenances, or a building or subdivision site, or a driveway, or a parking area, or a vacant lot or sales lot, or an urban or suburban open area to be constructed, used, altered, repaired, demolished, cleared, or leveled, or the earth to be moved or excavated, without taking reasonable precautions to limit excessive amounts of particulate matter from becoming airborne. Dust and other types of air contaminants shall be kept to a minimum by good modern practices such as using an approved dust suppressant or adhesive soil stabilizer, paving, covering, landscaping, continuous wetting, detouring, barring access, or other acceptable means.
- B.** No person shall cause, suffer, allow, or permit a vacant lot, or an urban or suburban open area, to be driven over or used by motor vehicles, trucks, cars, cycles, bikes, or buggies, or by animals such as horses, without taking reasonable precautions to limit excessive amounts of particulates from becoming airborne. Dust shall be kept to a minimum by using an approved dust suppressant, or adhesive soil stabilizer, or by paving, or by barring access to the property, or by other acceptable means.
- C.** No person shall operate a motor vehicle for recreational purposes in a dry wash, riverbed or open area in such a way as to cause or contribute to visible dust emissions which then cross property lines into a residential, recreational, institutional, educational, retail sales, hotel or business premises. For purposes of this subsection "motor vehicles" shall include, but not be limited to trucks, cars, cycles, bikes, buggies and 3-wheelers. Any person who violates the provisions of this subsection shall be subject to prosecution under A.R.S. § 49-463.
- Historical Note**  
Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-604 renumbered without change as Section R18-2-604 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-604 renumbered to R18-2-804, new Section R18-2-604

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renumbered from R18-2-404 and amended effective November 15, 1993 (Supp. 93-4).

**R18-2-605. Roadways and Streets**

- A. No person shall cause, suffer, allow or permit the use, repair, construction or reconstruction of a roadway or alley without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Dust and other particulates shall be kept to a minimum by employing temporary paving, dust suppressants, wetting down, detouring or by other reasonable means.
- B. No person shall cause, suffer, allow or permit transportation of materials likely to give rise to airborne dust without taking reasonable precautions, such as wetting, applying dust suppressants, or covering the load, to prevent particulate matter from becoming airborne. Earth or other material that is deposited by trucking or earth moving equipment shall be removed from paved streets by the person responsible for such deposits.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Former Section R9-3-605 renumbered without change as Section R18-2-605 (Supp. 87-3). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-605 renumbered to R18-2-805, new Section R18-2-605 renumbered from R18-2-405 effective November 15, 1993 (Supp. 93-4).

**R18-2-606. Material Handling**

No person shall cause, suffer, allow or permit crushing, screening, handling, transporting or conveying of materials or other operations likely to result in significant amounts of airborne dust without taking reasonable precautions, such as the use of spray bars, wetting agents, dust suppressants, covering the load, and hoods to prevent excessive amounts of particulate matter from becoming airborne.

**Historical Note**

Section R18-2-606 renumbered from R18-2-406 effective November 15, 1993 (Supp. 93-4).

**R18-2-607. Storage Piles**

- A. No person shall cause, suffer, allow, or permit organic or inorganic dust producing material to be stacked, piled, or otherwise stored without taking reasonable precautions such as chemical stabilization, wetting, or covering to prevent excessive amounts of particulate matter from becoming airborne.
- B. Stacking and reclaiming machinery utilized at storage piles shall be operated at all times with a minimum fall of material and in such manner, or with the use of spray bars and wetting agents, as to prevent excessive amounts of particulate matter from becoming airborne.

**Historical Note**

Section R18-2-607 renumbered from R18-2-407 effective November 15, 1993 (Supp. 93-4).

**R18-2-608. Mineral Tailings**

No person shall cause, suffer, allow, permit construction of, or otherwise own or operate, mineral tailing piles without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne. Reasonable precautions shall mean wetting, chemical stabilization, revegetation or such other measures as are approved by the Director.

**Historical Note**

Section R18-2-608 renumbered from R18-2-408, new Section R18-2-408 adopted effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R.

228, effective March 7, 2009 (Supp. 09-1).

**R18-2-609. Agricultural Practices**

A person shall not cause, suffer, allow, or permit the performance of agricultural practices outside the Phoenix and Yuma planning areas, as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210, including tilling of land and application of fertilizers without taking reasonable precautions to prevent excessive amounts of particulate matter from becoming airborne.

**Historical Note**

Section R18-2-609 renumbered from R18-2-409 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2).

**R18-2-610. Definitions for R18-2-610.01, R18-2-610.02, and R18-2-610.03**

The definitions in R18-2-101 and the following definitions apply to R18-2-610.01, R18-2-610.02, and R18-2-610.03:

1. "Access restriction" means reducing PM emissions by reducing the number of trips driven on agricultural aprons and access roads by restricting or eliminating public access to noncropland or commercial farm roads with signs or physical obstruction at locations that effectively control access to the area.
2. "Aggregate cover" means reducing PM emissions and wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to noncropland or commercial farm roads. The aggregate should be clean, hard and durable, and should be applied and maintained to a depth sufficient to reduce PM emissions.
3. "Area A" means the area delineated according to A.R.S. § 49-541(1).
4. "Best management practice" (BMP) means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
5. "Cessation of Night Tilling" means the discontinuation of tillage from sunset to sunrise on a day identified by the Maricopa or Pinal County Dust Control Forecast as being high risk of dust generation.
6. "Chemical irrigation" means reducing a minimum of one ground operation across a commercial farm by applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system, which reduces soil disturbance and increases efficiency of application.
7. "Chips/ mulches" means reducing PM emissions and soil movement and preserving soil moisture by applying and maintaining nontoxic chemical or organic dust suppressants to a depth sufficient to reduce PM emissions. Materials shall meet all specifications required by federal, state, or local water agencies, and is not prohibited for use by any applicable regulations.
8. "Combining tractor operations" means reducing soil compaction and a minimum of one tillage or ground operation across a commercial farm by using a tractor, implement, harvester, or other farming support vehicle to perform two or more tillage, cultivation, planting, or harvesting operations at the same time. If Equipment modification is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
9. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the bound-

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- ary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
10. "Commercial farm road" means a road that is unpaved, owned by a commercial farmer, and is used exclusively to service a commercial farm.
  11. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
  12. "Committee" means the Governor's Agricultural Best Management Practices Committee as established by A.R.S. § 49-457.
  13. "Conservation Tillage" means a tillage system that reduces a minimum of three tillage operations. This system reduces soil and water loss by planting into existing plant stubble on the field after harvest as well as managing the stubble so that it remains intact during the planting season.
  14. "Cover crop" means establishing cover crops that maintain a minimum of 60 percent ground cover. Native or volunteer vegetation that meets the minimum ground cover requirement is acceptable. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
  15. "Critical area planting" means reducing PM<sub>10</sub> emissions and wind erosion by planting trees, shrubs, vines, grasses, or other vegetative cover on noncropland in order to maintain at least 60 percent ground cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
  16. "Cropland" means land on a commercial farm that:
    - a. Is within the time-frame of final harvest to plant emergence, but does not include tillage activities;
    - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
    - c. Is a turn-row.
  17. "Cross-wind ridges" means stabilizing soil and reducing PM emissions and wind erosion by creating soil ridges in a commercial farm by tillage or planting operations. Ridges should be at least four inches in height, and be aligned as perpendicular as possible to the prevailing wind direction.
  18. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
    - a. Projected meteorological conditions, including:
      - i. Wind speed and direction,
      - ii. Stagnation,
      - iii. Recent precipitation, and
      - iv. Potential for precipitation;
    - b. Existing concentrations of air pollution at the time of the forecast; and
    - c. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
  19. "Equipment modification" means reducing PM emissions and soil erosion during tillage or ground operations by modifying and maintaining an existing piece of agricultural equipment, installing shielding equipment, modifying land planting and land leveling, matching the equipment to row spacing, or grafting to new varieties or technological improvements. If combining tractor operations is also chosen as a BMP, and uses the same practices as described in this BMP, this action is considered one BMP.
  20. "Fallow Field" means an area of land that is routinely cultivated, planted and harvested and is unplanted for one or more growing seasons or planting cycles, but is intended to be placed back in agricultural production.
  21. "Field Capacity" means the amount of water remaining in the soil two days after having been saturated and after free drainage has ceased.
  22. "Forage Crop" means a product grown for consumption by any domestic animal.
  23. "Genetically Modified" (GMO) means a living organism whose genetic material has been altered, changing one or more of its characteristics.
  24. "GPS: Global Position Satellite System" means using a satellite navigation system on farm equipment to calculate position in the field.
  25. "Green chop" means reducing soil compaction, soil disturbance and a minimum of one ground operation across a commercial farm by harvesting a Forage Crop without allowing it to dry in the field.
  26. "Ground operation" means an agricultural operation that is not a tillage operation, which involves equipment passing across the field. A ground operation includes harvest activities. A pass through the field may be a subset of a ground operation.
  27. "Harvest" means the time after planting up through harvest, including gathering mature crops from a commercial farm, as well as all actions taken immediately after crop removal, such as cooling, sorting, cleaning, and packing.
  28. "Integrated Pest Management" means reducing soil compaction and a minimum of one ground operation across a commercial farm for spraying by using a combination of techniques including organic, conventional, and biological farming practices to suppress pest problems.
  29. "Limited harvest activity" means performing no ground operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
  30. "Limited tillage activity" means performing no tillage operations on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation.
  31. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
  32. "Multi-year crop" means reducing PM emissions from wind erosion and a minimum of one tillage and ground operation across a commercial farm, by protecting the soil surface by growing a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
  33. "Noncropland" means any commercial farm land that:
    - a. Is no longer used for agricultural production;
    - b. Is no longer suitable for production of crops;
    - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
    - d. Includes a ditch, ditch bank, equipment yard, storage yard, or well head.

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34. "NRCS" means the Natural Resource Conservation Service.
35. "Organic material cover" means reducing PM emissions and wind erosion and preserving soil moisture by applying and maintaining cover material such as animal waste or plant residue, to a soil surface to reduce soil movement. Material shall be evenly applied and maintained to a depth sufficient to reduce PM emissions and coverage should be a minimum of 70 percent.
36. "Permanent cover" means reducing PM emissions and wind erosion by maintaining a long-term perennial vegetative cover on cropland that is temporarily not producing a major crop. Perennial species such as grasses and/or legumes shall be used to establish at least 60 percent cover. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
37. "Pinal County PM Nonattainment Area" means the West Pinal PM<sub>10</sub> planning area and the West Central PM<sub>2.5</sub> planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
38. "Plant stubble" means stubble on the soil surface, which insulates soil to reduce evaporation of moisture, and also protects the soil from wind and water erosion.
39. "Planting based on soil moisture" means reducing PM emissions and wind erosion by applying water or having enough moisture in the soil to germinate the seed prior to planting. Soil must have a minimum soil moisture content of 60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
40. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
41. "Precision Farming" means reducing the number of passes across a commercial farm by at least 12 inches per pass by using GPS to precisely guide farm equipment in the field.
42. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the operation of farm vehicles or farm equipment on noncropland or commercial farm roads at speeds not to exceed 15. This can be achieved through installation of engine speed governors, signage, or speed control devices.
43. "Reduced harvest activity" means reducing soil disturbance, soil and water loss, and the number of mechanical harvest passes by a minimum of one ground operation across a commercial farm, by means other than equipment modification or combining tractor operations.
44. "Reduced tillage system" means reducing soil disturbance, soil and water loss, by using a single piece of equipment that reduces a minimum of three tillage operations, by means other than equipment modification or combining tractor operations.
45. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(1)(a) through (P)(1)(d).
46. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(P)(6).
47. "Residue management" means reducing PM emissions and wind erosion by maintaining a minimum of 60 percent ground cover of crop and other plant residues on a soil surface between the time of harvest of one crop and the commencement of tillage for a new crop. Compliance shall be determined by the Line Transect Test Method, NRCS National Agronomy Manual, Subpart 503.51, Estimating Crop Residue Cover, amended through February 2011 (and no future editions).
48. "Sequential cropping" means reducing PM emissions and wind erosion by growing crops in a sequence or close rotation that limits the amount of time bare soil is exposed on a commercial farm to 30 days or less.
49. "Shuttle System/Larger Carrier" means reducing one out of every four trips across a commercial farm by using multiple or larger bins/trailers to haul commodity from the field.
50. "Significant Agricultural Earth Moving Activities" means either leveling activities conducted on a commercial farm that disturb the soil more than 4 inches below the surface, or the creation, maintenance and relocation of: ditches, canals, ponds, irrigation lines, tailwater recovery systems (agricultural sumps) and other water conveyances, not to include activities performed on cropland for tillage, ground operations or harvest.
51. "Silt content test method" means the test method as described in Appendix 2.
52. "Stabilization of soil prior to plant emergence" means reducing PM emissions by applying water to soil prior to crop emergence in order to cause the soil to form a visible crust.
53. "Surface roughening" means reducing PM emissions or wind erosion by manipulating a soil surface by means such as rough discing or tillage in order to produce or maintain clods on the land surface. Compliance shall be determined by NRCS Practice Code 609, Surface Roughening, amended through November 2008 (and no future editions).
54. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on noncropland or commercial farm roads with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
55. "Tillage" means any mechanical practice that physically disturbs the soil, and includes preparation for planting, such as plowing, ripping, or discing.
56. "Tillage based on soil moisture" means reducing PM emissions by irrigating fields to the depth of the proposed cut prior to soil disturbances or conducting tillage to coincide with precipitation. Soil must have a minimum soil moisture content of 40-60% of field capacity at planting depth. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions).
57. "Timing of a tillage operation" means reducing wind erosion and PM emissions by performing tillage operations that minimize the amount of time within 45 days.
58. "Tillage operation" means an agricultural operation that mechanically manipulates the soil for the enhancement of crop production. Examples include discing or bedding. A pass through the field may be a subset of a tillage operation.

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59. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from noncropland or commercial farm roads or and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
60. "Transgenic Crops" means reducing a minimum of one tillage or ground operation, the number of chemical spray applications, or soil disturbances by using plants that are genetically modified.
61. "Transplanting" means reducing a minimum of one ground operation across a commercial farm and minimizing soil disturbance by utilizing plants already in a growth state as compared to seeding.
62. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
63. "Watering" means reducing PM emissions and wind erosion by applying water to noncropland or commercial farm road bare soil surfaces during periods of high traffic until the surfaces are visibly moist.
64. "Watering on a high risk day" means reducing PM emissions and wind erosion by applying water to commercial farm road bare soil surfaces until the surfaces are visibly moist, on a day forecast to be high risk for dust generation by the Maricopa or Pinal County Dust Control Forecast.
65. "Wind barrier" means reducing PM emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
- Historical Note**
- Former Section R18-2-610 renumbered to R18-2-612; new Section R18-2-610 adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Amended by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (A) corrected at the request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).
- R18-2-610.01. Agricultural PM General Permit for Crop Operations; Maricopa County PM Nonattainment Area**
- A.** A commercial farmer within the Maricopa County PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest or ground operation activities:
1. Chemical irrigation,
  2. Combining tractor operations,
  3. Equipment modification,
  4. Green Chop,
  5. Integrated Pest Management,
  6. Limited harvest activity,
  7. Limited tillage activity,
  8. Multi-year crop,
  9. Cessation of Night Tilling,
  10. Planting based on soil moisture,
  11. Precision Farming,
  12. Reduced harvest activity,
  13. Reduced tillage system,
  14. Tillage based on soil moisture,
  15. Timing of a tillage operation,
  16. Transgenic Crops,
  17. Transplanting,
  18. Shuttle System/Larger Carrier, or
  19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
1. Access restriction,
  2. Aggregate cover,
  3. Wind barrier,
  4. Critical area planting,
  5. Organic material cover,
  6. Reduce vehicle speed,
  7. Synthetic particulate suppressant,
  8. Track-out control system, or
  9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
1. Wind barrier,
  2. Cover crop,
  3. Cross-wind ridges,
  4. Chips/mulches,
  5. Multi-year crop,
  6. Permanent cover,
  7. Stabilization of soil prior to plant emergence,
  8. Residue management,
  9. Sequential cropping, or
  10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
  4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation.

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- tion across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
  2. The mailing address or physical address of the commercial farm; and
  3. The best management practices selected for tillage, harvest, and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices identified in the most recently submitted Best Management Practices Program General Permit Record Form shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM<sub>10</sub> general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- Historical Note**
- New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4).  
Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).
- R18-2-610.02. Agricultural PM General Permit for Crop Operations; Moderate PM Nonattainment Areas, Designated After June 1, 2009**
- A.** A commercial farmer within a PM Moderate Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each category to reduce PM emissions.
- B.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions during tillage, harvest and ground operation activities:
1. Chemical irrigation,
  2. Combining tractor operations,
  3. Equipment modification,
  4. Green Chop,
  5. Integrated Pest Management,
  6. Limited harvest activity,
  7. Limited tillage activity,
  8. Multi-year crop,
  9. Cessation of Night Tilling,
  10. Planting based on soil moisture,
  11. Precision Farming,
  12. Reduced harvest activity,
  13. Reduced tillage system,
  14. Tillage based on soil moisture,
  15. Timing of a tillage operation,
  16. Transgenic Crops,
  17. Transplanting, or
  18. Shuttle System/Larger Carrier, or
  19. Conservation Tillage.
- C.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from noncropland and commercial farm roads:
1. Access restriction,
  2. Aggregate cover,
  3. Wind barrier,
  4. Critical area planting,
  5. Organic material cover,
  6. Reduce vehicle speed,
  7. Synthetic particulate suppressant,
  8. Track-out control system, or
  9. Watering.
- D.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), to reduce PM emissions from cropland:
1. Wind barrier,
  2. Cover crop,
  3. Cross-wind ridges,
  4. Chips/mulches,
  5. Multi-year crop,
  6. Permanent cover,
  7. Stabilization of soil prior to plant emergence,
  8. Residue management,
  9. Sequential cropping, or
  10. Surface roughening.
- E.** A commercial farmer shall implement from the following best management practices, as described in subsection (A), when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
1. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  2. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  3. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or

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4. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- F.** From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete and maintain a Best Management Practices Program General Permit Record Form demonstrating compliance with this Section. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
1. The name of the commercial farmer, signature, and date signed;
  2. The mailing address or physical address of the commercial farm; and
  3. The best management practice selected for tillage, harvest and ground operation activities, cropland, noncropland and commercial farm roads, and significant earth moving activities (if applicable).
- G.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- H.** A person may develop different practices to control PM emissions not contained in subsections (B), (C), (D), or (E) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- J.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- K.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- L.** The Director shall document noncompliance with this Section before issuing a compliance order.
- M.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- Historical Note**
- New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).
- R18-2-610.03. Agricultural PM General Permit for Crop Operations; Pinal County PM Nonattainment Area**
- A.** On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of best management practices as described in sections (B)(1)(b), (B)(2)(b), (B)(3)(b), (B)(4)(b), and (B)(5)(b).
- B.** On all days, a commercial farmer shall implement at least one best management practice from each category to reduce PM emissions, as described below in subsections (1)(a), (2)(a), (3)(a), (4)(a), and (6), and at least two best management practices from subsection (5)(a). If a commercial farmer implements the Conservation tillage or Reduced tillage system best management practice for the tillage category, they do not have to implement a best management practice from the subsections (2)(a), (2)(b), (5)(a) and (5)(b).
1. Tillage:
    - a. A commercial farmer shall implement at least one of the following:
      - i. Combining tractor operations,
      - ii. Equipment modification,
      - iii. Multi-year crop,
      - iv. Cessation of night tilling,
      - v. Planting based on soil moisture,
      - vi. Precision farming,
      - vii. Tillage based on soil moisture,
      - viii. Timing of a tillage operation,
      - ix. Transgenic crops,
      - x. Transplanting,
      - xi. Reduced tillage system, or
      - xii. Conservation tillage.
    - b. Unless choosing limited tillage activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
      - i. Multi-year crop,
      - ii. Planting based on soil moisture,
      - iii. Tillage based on soil moisture,
      - iv. Limited tillage activity,
      - v. Reduced tillage system, or
      - vi. Conservation tillage.
  2. Ground Operations and Harvest:
    - a. A commercial farmer shall implement at least one of the following:
      - i. Combining tractor operations,
      - ii. Equipment modification,
      - iii. Chemical irrigation,
      - iv. Green chop,
      - v. Integrated pest management,
      - vi. Multi-year crop,
      - vii. Precision farming,
      - viii. Reduced harvest activity,
      - ix. Transgenic crops, or
      - x. Shuttle System/Larger Carrier.
    - b. Unless choosing limited harvest activity (subsection iv, below), on the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
      - i. Green chop,
      - ii. Integrated pest management,
      - iii. Multi-year crop, or
      - iv. Limited harvest activity.
  3. Noncropland:
    - a. A commercial farmer shall implement at least one of the following best management practices:
      - i. Access restriction,
      - ii. Aggregate cover,
      - iii. Wind barrier,
      - iv. Critical area planting,
      - v. Organic material cover,
      - vi. Reduce vehicle speed,
      - vii. Synthetic particulate suppressant, or
      - viii. Watering.

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- b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a non-cropland area that experiences more than 20 VDT from 2 or more axle vehicles, commercial farmer shall ensure implementation of at least one of the following best management practices:
  - i. Aggregate cover,
  - ii. Wind barrier,
  - iii. Critical area planting,
  - iv. Organic material cover,
  - v. Synthetic particulate suppressant, or
  - vi. Watering on a high risk day.
- 4. Commercial farm roads:
  - a. A commercial farmer shall implement at least one of the following best management practices:
    - i. Access restriction,
    - ii. Reduce vehicle speed,
    - iii. Track-out control system,
    - iv. Aggregate cover,
    - v. Synthetic particulate suppressant,
    - vi. Watering, or,
    - vii. Organic material cover.
  - b. Unless choosing watering on a high risk day (subsection vi, below), on the day before and during a day forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, on a road that experiences more than 20 VDT from 2 or more axle vehicles, a commercial farmer shall ensure implementation of at least one of the following best management practices:
    - i. Aggregate cover,
    - ii. Synthetic particulate suppressant,
    - iii. Wind barrier,
    - iv. Organic material cover,
    - v. Roads are stabilized as determined by the silt content test method,
    - vi. Watering on a high risk day.
- 5. Cropland:
  - a. A commercial farmer shall implement at least two of the following best management practices, one from subsection (i) through (vii), and one from subsection (viii) through (xi), to reduce PM emissions from cropland:
    - i. Wind barrier,
    - ii. Cover crop,
    - iii. Cross-wind ridges,
    - iv. Chips/mulches,
    - v. Sequential cropping
    - vi. Residue management,
    - vii. Surface roughening,
    - viii. Multi-year crop,
    - ix. Permanent cover, or
    - x. Stabilization of soil prior to plant emergence.
  - b. On the day before and during the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, a commercial farmer shall ensure implementation of at least one of the following:
    - i. Wind barrier,
    - ii. Cover crop,
    - iii. Cross-wind ridges,
    - iv. Chips/mulches,
    - v. Surface roughening,
    - vi. Multi-year crop,
    - vii. Permanent cover,
    - viii. Stabilization of soil prior to plant emergence, or
    - ix. Residue management.
- 6. A commercial farmer shall implement at least one of the following best management practices, when conducting Significant Agricultural Earth Moving Activities as defined in R18-2-610:
  - a. Apply water prior to conducting Significant Agricultural Earth Moving Activities and/or time Significant Agricultural Earth Moving Activities to coincide with precipitation. Soil must have a minimum soil moisture content of 50% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  - b. Apply water during Significant Agricultural Earth Moving Activities. Soil must have a minimum soil moisture content of 30% of field capacity. Compliance shall be determined by NRCS Estimating Soil Moisture by Feel and Appearance Method, amended through April 1998 (and no future editions);
  - c. Limit activities on a day identified by the Maricopa or Pinal County Dust Control Forecast to be high risk for dust generation; or
  - d. Conduct Significant Agricultural Earth Moving Activities in a manner to reduce a minimum of one ground operation across a commercial farm by using equipment that is the most efficient means of moving the soil.
- C. From and after December 31, 2015, a commercial farmer who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form demonstrating compliance with this rule. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial farmer. The Best Management Practice Program General Permit Record Form shall include the following information:
  - 1. The name of the commercial farmer, signature, and date signed;
  - 2. The mailing address or physical address of the commercial farm; and
  - 3. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
  - 4. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- D. Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the commercial farmer with a Best Management Practices Program 3-year Survey. The commercial farmer shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA without reference to a commercial farmer's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:

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1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
  2. The signature of the commercial farmer and the date the form was signed;
  3. The acreage of each crop type planted/growing during the calendar year that the survey is conducted;
  4. The total miles of commercial farm roads at the commercial farm;
  5. The total acreage of the noncropland at the commercial farm;
  6. The best management practices selected for tillage, ground operations and harvest, cropland, noncropland, commercial farm roads, and significant earth moving activities (if applicable); and
  7. Any additional best management practices selected for high risk days as predicted by the Pinal County Dust Control Forecast.
- E.** Records of any changes to the Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the commercial farmer onsite and made available for review by the Director within two business days of notice to the commercial farmer.
- F.** A person may develop different practices to control PM emissions not contained in subsections (B)(1) through (B)(6) and may submit such practices that are proven effective through on-farm demonstration trials to the Committee. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- G.** A commercial farmer shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- H.** The Director shall not assess a fee to a commercial farmer for coverage under the agricultural PM general permit.
- I.** A commercial farmer shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- J.** The Director shall document noncompliance with this Section before issuing a compliance order.
- K.** A commercial farmer who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- c. "Commercial animal operation" means a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and a commercial swine facility, as defined in this Section.
  - d. "Commercial animal operator" means an individual, entity, or joint operation in general control of a commercial animal operation.
  - e. "Dust Control Forecast" means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
    - i. Projected meteorological conditions, including:
      - (1) Wind speed and direction,
      - (2) Stagnation,
      - (3) Recent precipitation, and
      - (4) Potential for precipitation;
    - ii. Existing concentrations of air pollution at the time of the forecast; and
    - iii. Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
  - f. "High traffic areas" means areas that experience more than 20 VDT from 2 or more axle vehicles.
  - g. "Maricopa PM nonattainment area" means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
  - h. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, State, or Federal entities.
  - i. "Pinal County PM Nonattainment Area" means the West Pinal PM<sub>10</sub> planning area and the West Central PM<sub>2.5</sub> planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
  - j. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
  - k. "Regulated agricultural activity" means a regulated agricultural activity as defined in A.R.S. § 49-457(P)(5).
    - l. "Regulated area" means the regulated area as defined in A.R.S. § 49-457(P)(6).
    - m. "Track-out control device" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment from unpaved access connections and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
    - n. "Unpaved access connections" means any unpaved road connection which connects to a paved public road.
    - o. "Unpaved roads or feed lanes" means roads and feed lanes that are unpaved, owned by a commercial ani-

**Historical Note**

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-611. Definitions for R18-2-611.01, R18-2-611.02, and R18-2-611.03**

The definitions in R18-2-101 and the following definitions apply to R18-2-611.01, R18-2-611.02, and R18-611.03:

1. The following definitions apply to a commercial dairy operation, a commercial beef feedlot, a commercial poultry facility, and commercial swine facility:
  - a. "Animal waste handling and transporting" means the processes by which any animal excretions and mixtures containing animal excretions are collected and transported.
  - b. "Arenas, corrals and pens" means areas where animals are confined for the purposes of, but not limited to, feeding, displaying, safety, racing, exercising, or husbandry.

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- mal operator, and used exclusively to service a commercial animal operation.
- p. "VDT" (Vehicle trips per day) means trips per day made by one vehicle, in one direction.
2. The following definitions apply to a commercial dairy operation:
- a. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
  - b. "Apply a fibrous layer" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
  - c. "Bunkers" means below ground level storage systems for storing large amount of silage, which is covered with a plastic tarp.
  - d. "Calves" means young dairy stock under two months of age.
  - e. "Cement cattle walkways to milk barn" means reducing PM emissions by fencing pathways from the corrals to the milking barn, restricting dairy cattle to surfaces with concrete floors.
  - f. "Commercial dairy operation" means a dairy operation with more than 150 dairy cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
  - g. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
  - h. "Covers for silage" means reducing PM emissions and wind erosion by using large plastic tarps to completely cover silage.
  - i. "Do not run cattle" means reducing PM emissions by walking dairy cattle to the milking barn.
  - j. "Feed higher moisture feed to dairy cattle" means reducing PM emissions by feeding dairy cattle one or any combination of the following:
    - i. Add water to ration mix to achieve a 20% minimum moisture level,
    - ii. Add molasses or tallow to ration mix at a minimum of 1%,
    - iii. Add silage, or
    - iv. Add green chop.
  - k. "Feed green chop" means feeding high moisture feed that contains at least 30% moisture directly to dairy cattle.
  - l. "Groom manure surface" means reducing PM emissions and wind erosion by:
    - i. Flushing or vacuuming lanes daily,
    - ii. Scraping and harrowing pens on a weekly basis, and
    - iii. Removing manure every four months with equipment that leaves an even corral surface of compacted manure on top of the soil.
  - m. "Hutches" means raised, roofed enclosures that protect the calves from the elements.
  - n. "Pile manure between cleanings" means reducing PM emissions by collecting loose surface materials within the confines of the surface area of the occupied feed pen every two weeks.
  - o. "Provide cooling in corral" means reducing PM emissions by using cooling systems under the corral shades to reduce the ambient air temperature, thereby increasing stocking density in the cool areas of the corrals.
  - p. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
  - q. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
  - r. "Silage" means fermented, high-moisture fodder that can be fed to ruminants, such as cattle and sheep; usually made from grass crops including corn, sorghum or other cereals, by using the entire green plant.
  - s. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
  - t. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial dairy operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
  - u. "Use drag equipment to maintain pens" means reducing PM emissions by using manure equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
  - v. "Use free stall housing" means reducing PM emissions by enclosing one cow per stall, which are outfitted with concrete floors.
  - w. "Water misting systems" means reducing PM emissions from dry manure by using systems that project a cloud of very small water particles onto the manure surface, keeping the surface visibly moist.
  - x. "Wind barrier" means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
3. The following definitions apply to a commercial beef cattle feedlot:
- a. "Add moisture to pen surface" means reducing PM emissions and wind erosion by applying at least three to six gallons of water per head/per day in pens occupied by beef cattle.

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- b. "Add molasses or tallow to feed" means reducing PM emissions by adding molasses or tallow so that it equals three percent of the total ration.
- c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
- d. "Apply a fibrous layer in working areas" means reducing PM emissions and soil movement, and preserving soil moisture by spreading shredded or deconstructed plant materials to cover loose soil in high animal traffic areas. Material shall be consistently applied to a minimum depth of two inches above the soil surface and coverage should be a minimum of 70 percent.
- e. "Bulk materials" means reducing PM emissions by using a closed conveyor system instead of vehicular means to move grain or other.
- f. "Commercial beef cattle feedlot" means a beef cattle feedlot with more than 500 beef cattle within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
- g. "Concrete apron" means reducing PM emissions by using solidly formed concrete surface, at least 4 inches thick on top of the soil surface, inside the feed pen for 8 feet approaching the feed bunk or water trough.
- h. "Control cattle during movements" means reducing PM emissions by suppressing the animal's ability to run by driving them forward while intruding on their "flight zones" or restraining the animal's movement.
- i. "Cover manure hauling trucks" means reducing PM emissions by completely covering the top of the loaded area.
- j. "Feed higher moisture feed to beef cattle" means reducing PM emissions by feeding beef cattle feed that contains at least 30% moisture.
- k. "Frequent manure removal" means reducing PM emissions and wind erosion by harvesting loose manure on top of the pen surface at least once every six months.
- l. "Pile manure between cleanings" means reducing PM emissions by collecting loose manure surface materials, by scraping or pushing, within the confines of the surface area of the occupied feed pen at least four times per year.
- m. "Provide shade in corral" means reducing PM emissions by increasing stocking density and reducing animal movement by using a permanent structure, which provides at least 16 square feet per animal of shaded pen surface.
- n. "Push equipment" means manure harvesting equipment pushed in front of a tractor.
- o. "Store and maintain feed stock" means reducing PM emissions and wind erosion by storing feed stock in a covered area where the commodity is surrounded on at least three sides by a structure.
- p. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial beef feedlot with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
- q. "Use drag equipment to maintain pens" means reducing PM emissions by using manure harvesting equipment pulled behind a tractor instead of using push equipment, which avoids dust accumulation in floor depressions.
- r. "Wind barrier" means reducing PM10 emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).
4. The following definitions apply to a commercial poultry facility:
- a. "Add moisture through ventilation systems" means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining a minimum of 20% moisture in the air within the housing system to bind small particles to larger particles.
- b. "Add oil and/or moisture to the feed" means reducing PM emissions by adding a minimum of 1% edible oil and/or moisture to feed rations to bind small particles to larger particles.
- c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
- d. "Clean aisles between cage rows" means reducing PM emissions by cleaning the aisles between cage rows at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
- e. "Clean fans, louvers, and soffit inlets in a commercial poultry facility" means reducing PM emissions by cleaning fans, louvers, and soffit inlets when the facility is empty between depopulating and populating the facility.
- f. "Clean floors and walls in a commercial poultry facility" means reducing PM emissions by cleaning floors and walls to prevent dried manure, spilled feed, and debris accumulation when the facility is empty between depopulating and populating the facility.
- g. "Commercial poultry facility" means a poultry operation with more than 25,000 egg laying hens within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as

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- stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area.
- h. "Control vegetation on building exteriors" means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and building.
  - i. "Enclose transfer points" means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduce air contact with the feed rations during feed conveyance.
  - j. "House in fully enclosed ventilated buildings" means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
  - k. "Maintain moisture in manure solids" means reducing PM emissions by maintaining a moisture content of a minimum of 15% in the solids sufficient to bind small particles to larger particles.
  - l. "Minimize drop distance" means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is approximately 1 foot or less, which reduces air contact with the feed rations during feed conveyance.
  - m. "Poultry" means any domesticated bird including chickens, turkeys, ducks, geese, guineas, ratites and squabs.
  - n. "Remove spilled feed" means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
  - o. "Stack separated manure solids" means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
  - p. "Store feed" means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
  - q. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial poultry operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
  - r. "Use enclosed feed distribution system" means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during feed conveyance.
  - s. "Use a flexible discharge spout" means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
  - t. "Use no bedding in the production facility" means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.
  - u. "Use of a rotary dryer to dry manure waste" means reducing PM10 emissions by drying the manure waste in a rotary dryer fitted with a baghouse or wet scrubber. A commercial poultry facility using a rotary dryer must comply with all of the following:
    - i. Install, maintain, and operate the baghouse or wet scrubber in a manner consistent with the manufacturer's specifications at all times the rotary dryer is operated. The manufacturer specifications must be available on site upon request.
    - ii. Conduct monthly observations using EPA Method 22 on the control equipment to ensure proper operation. If improper operation is observed through EPA Method 22, the dryer must stop immediately and the equipment repaired before resuming operations.
    - iii. For baghouses, conduct an annual black light inspection of the bags to detect broken or leaking bags. If broken or leaking bags are detected it must be repaired or replaced immediately.
    - iv. Maintain a record of all repair activity required under (ii) and (ii) that must be made available within two days of Director's request for inspection.
5. The following definitions apply to a commercial swine facility:
- a. "Add oil and/or moisture to the feed" means reducing PM emissions by adding a minimum of 0.5% edible oil and/or moisture to feed rations to bind small particles to larger particles.
  - b. "Add moisture through ventilation systems" means reducing PM emissions by using a ventilation system that is designed to allow stock to maintain their normal body temperature without difficulty while maintaining minimum of 15% moisture in the air within the housing system to bind small particles to larger particles.
  - c. "Aggregate cover" means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads or feed lanes. The aggregate should be clean, hard and durable, and should be applied and maintained to a minimum of three inches deep.
  - d. "Clean aisles between pens and stalls" means reducing PM emissions by cleaning the aisles between pens and stalls at least twice every 14 days to prevent dried manure, spilled feed, and debris accumulation.
  - e. "Clean fans, louvers, and soffit inlets in a commercial swine facility" means reducing PM emissions by cleaning fans, louvers, and soffit inlets between transfer of animal groups, but in any case, at least every 6 months.
  - f. "Clean pens, floors and walls in a commercial swine facility" means reducing PM emissions by cleaning pens, floors, and walls between transfer of animal groups to prevent dried manure, spilled feed, and debris accumulation, but in any case, at least every 6 months.
  - g. "Commercial swine facility" means a swine operation with more than 50 animal units for more than 30 consecutive days within the boundary of the Maricopa PM nonattainment area and Maricopa County portion of Area A, a PM nonattainment area designated after June 1, 2009 as stated in A.R.S. § 49-457(P)(1)(f), or the Pinal County PM Nonattainment Area. One thousand pounds equals one animal unit.

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- h. "Control vegetation on building exteriors" means reducing PM emissions by removing, cutting, or trimming vegetation that accumulates PM and restricts ventilation of the building, so as to leave approximately 3 feet between the vegetation and the building.
- i. "Enclose transfer points" means reducing PM emissions by enclosing the points of transfer between the enclosed, weatherproof storage structure and the enclosed feed distribution system, which reduces air contact with the feed rations during feed conveyance.
- j. "House in fully enclosed ventilated buildings" means reducing PM emissions by utilizing fully enclosed buildings with sufficient ventilation.
- k. "Lagoon" means a liquid manure storage and treatment pond.
- l. "Maintain moisture in manure solids" means reducing PM10 emissions by maintaining a minimum moisture content of 10% in the solids sufficient to bind small particles to larger particles.
- m. "Minimize drop distance" means reducing PM emissions by designing the feed distribution system so that the distance the feed ration drops from the feed distribution system into feeders is 3 feet or less, which reduces air contact with the feed rations during feed conveyance.
- n. "Remove spilled feed" means reducing PM emissions by removing spilled feed from the housing facility at least once every 14 days.
- o. "Slatted flooring" means reducing PM emissions by using flooring that is a slotted concrete or wire-mesh floor set above a liquid manure collection pit, which allows the excrement to fall through the flooring into the liquid pit below, which prevents solids build-up. Slats 4 to 8 inches wide with spacing of about 1 inch in between are recommended.
- p. "Sloped concrete flooring" means reducing PM emissions by pouring concrete with a minimum of 0.25% grade inside of the barns which provides drainage and easier cleaning of floor areas.
- q. "Stack separated manure solids" means reducing PM emissions and wind erosion by reducing the amount of exposed surface area of manure solids.
- r. "Store feed" means reducing PM emissions by storing feed in a structure that is enclosed and weatherproof, which reduces air contact with the feed rations during feed storage.
- s. "Store separated manure solids" means reducing PM emissions by storing manure solids in a wind-blocked area behind a wall, structure, or area with natural wind protection to minimize blowing air movement over the manure stack.
- t. "Synthetic particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface on a commercial swine operation with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide that is used to control particulate matter.
- u. "Use a flexible discharge spout" means reducing PM emissions and wind erosion at the time of bulk feed deliveries to the housing units by using a flexible discharge spout on the end of the feed truck transfer auger.
- v. "Use enclosed feed distribution system" means reducing PM emissions by using an enclosed feed conveyance system that distributes feed rations throughout the housing facility, which reduces air contact with the feed rations during the feed conveyance.
- w. "Use no bedding in the production facility" means reducing PM emissions by not using bedding such as wood shavings, sawdust, peanut hulls, straw, or other organic material.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Amended by exempt rulemaking at 13 A.A.R. 4326, effective November 14, 2007 (Supp. 07-4). Section repealed; new Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4). Subsection (2)(a) corrected at request of the Department, Office File No. M12-133, filed April 5, 2012 (Supp. 11-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).

**R18-2-611.01. Agricultural PM General Permit for Animal Operations; Maricopa County Serious PM Nonattainment Areas**

- A.** A commercial animal operator within a Serious PM Nonattainment Area shall implement at least two best management practices from each category to reduce PM emissions.
- B.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
    - a. Use free stall housing,
    - b. Provide shade in corral,
    - c. Provide cooling in corral,
    - d. Cement cattle walkways to milk barn,
    - e. Groom manure surface,
    - f. Water misting systems,
    - g. Use drag equipment to maintain pens,
    - h. Pile manure between cleanings,
    - i. Feed green chop,
    - j. Keep calves in barns or hutches,
    - k. Do not run cattle,
    - l. Apply a fibrous layer, or
    - m. Wind barrier.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to dairy cattle,
    - b. Store and maintain feed stock,
    - c. Covers for silage,
    - d. Store silage in bunkers,
    - e. Cover manure hauling trucks, or
    - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
  3. Unpaved Access Connections:
    - a. Install signage to limit vehicle speed to 15 mph,
    - b. Install speed control devices,
    - c. Restrict access to through traffic,
    - d. Install and maintain a track-out control device,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant, or
    - h. Apply and maintain water as a dust suppressant.

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4. Unpaved Roads or Feed Lanes:
  - a. Install engine speed governors on feed truck to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict access to through traffic,
  - e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant,
  - h. Apply and maintain water as a dust suppressant,
  - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
  - j. Apply and maintain pavement or cement feed lanes.
- C. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  1. Arenas, Corrals, and Pens:
    - a. Concrete aprons,
    - b. Provide shade in corral,
    - c. Add moisture to pen surface,
    - d. Manure removal,
    - e. Pile manure between cleanings,
    - f. Feed higher moisture feed to beef cattle,
    - g. Control cattle during movements,
    - h. Use drag equipment to maintain pens,
    - i. Apply a fibrous layer, or
    - j. Wind barrier.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to beef cattle,
    - b. Add molasses or tallow to feed,
    - c. Store and maintain feed stock,
    - d. Bulk materials,
    - e. Use drag equipment to maintain pens,
    - f. Cover manure hauling trucks, or
    - g. Do not load manure when wind exceeds 15 mph.
  3. Unpaved Access Connections:
    - a. Install and maintain a track-out control device,
    - b. Apply and maintain pavement in high traffic areas,
    - c. Apply and maintain aggregate cover,
    - d. Apply and maintain synthetic particulate suppressant, or
    - e. Apply and maintain water as a dust suppressant.
  4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed truck to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict access to through traffic,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant,
    - h. Apply and maintain water as a dust suppressant, or
    - i. Apply and maintain oil on roads or feed lanes.
- D. A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  1. Arenas, Corrals, and Pens (Housing):
    - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
    - b. Use no bedding,
    - c. Control vegetation on building exteriors,
    - d. Add moisture through ventilation systems, or
    - e. House in fully enclosed ventilated buildings.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to the feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean floors and walls in a commercial poultry facility,
    - i. Clean aisles between cage rows,
    - j. Stack separated manure solids,
    - k. Maintain moisture in manure solids, or
    - l. Use of a rotary dryer to dry manure waste.
  3. Unpaved Access Connections:
    - a. Install speed control devices,
    - b. Restrict traffic access,
    - c. Install and maintain a track-out control system, or
    - d. Install signage to limit vehicle speed to 15 mph.
  4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed trucks to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict traffic access,
    - e. Apply and maintain aggregate cover,
    - f. Apply and maintain synthetic particulate suppressant,
    - g. Apply and maintain water, or
    - h. Apply and maintain oil on roads or feed lanes.
- E. A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  1. Arenas, Corrals, and Pens (Housing):
    - a. House in fully enclosed ventilated buildings,
    - b. Use no bedding,
    - c. Use a slatted floor system,
    - d. Use sloped concrete flooring,
    - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
    - f. Control vegetation on building exteriors, or
    - g. Add moisture through ventilation systems.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean pens, floors, and walls in a commercial swine facility,
    - i. Clean aisles between pens and stalls,
    - j. Store separated manure solids in a wind-blocked area,
    - k. Stack separated manure solids,
    - l. Maintain moisture in manure solids, or
    - m. Maintain liquid lagoon level.
  3. Unpaved Access Connections:
    - a. Install speed control devices,
    - b. Restrict traffic access,
    - c. Install and maintain a track-out control system,
    - d. Install signage to limit vehicle speed to 15 mph.
  4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed trucks to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,

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- c. Install speed control devices,
  - d. Restrict traffic access,
  - e. Apply and maintain aggregate cover,
  - f. Apply and maintain synthetic particulate suppressant,
  - g. Apply and maintain water,
  - h. Apply and maintain oil on roads or feed lanes, or
  - i. Wind barrier.
- F.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practice Program General Permit Record form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
  2. The mailing address or physical address of the commercial animal operation, and
  3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- H.** A person may develop different practices not contained in subsection (B), (C), (D), or (E), that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee.
- I.** The Director shall not assess a fee to a commercial animal operator for coverage under the Best Management Practice Program General Permit Record Form.
- J.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K.** The Director shall document noncompliance with this Section before issuing a compliance order.
- L.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
- Historical Note**
- New Section made by exempt rulemaking at 18 A.A.R. 137, effective December 29, 2011 (Supp. 11-4).  
Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 22 A.A.R. 987, effective April 5, 2016 (Supp. 16-2).
- R18-2-611.02. Agricultural PM General Permit for Animal Operations; Moderate PM Nonattainment Areas Designated After June 1, 2009, Except Pinal County PM Nonattainment Area**
- A.** A commercial animal operator within a Moderate PM Nonattainment Area, designated after June 1, 2009, shall implement
- at least one best management practice from each category to reduce PM emissions.
- B.** A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
    - a. Use free stall housing,
    - b. Provide shade in corral,
    - c. Provide cooling in corral,
    - d. Cement cattle walkways to milk barn,
    - e. Groom manure surface,
    - f. Water misting systems,
    - g. Use drag equipment to maintain pens,
    - h. Pile manure between cleanings,
    - i. Feed green chop,
    - j. Keep calves in barns or hutches,
    - k. Do not run cattle,
    - l. Apply a fibrous layer, or
    - m. Wind barrier.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to dairy cattle,
    - b. Store and maintain feed stock,
    - c. Covers for silage,
    - d. Store silage in bunkers,
    - e. Cover manure hauling trucks, or
    - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
  3. Unpaved Access Connections:
    - a. Install signage to limit vehicle speed to 15 mph,
    - b. Install speed control devices,
    - c. Restrict access to through traffic,
    - d. Install and maintain a track-out control device,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant, or
    - h. Apply and maintain water as a dust suppressant.
  4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed truck to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict access to through traffic,
    - e. Apply and maintain pavement in high traffic areas,
    - f. Apply and maintain aggregate cover,
    - g. Apply and maintain synthetic particulate suppressant,
    - h. Apply and maintain water as a dust suppressant,
    - i. Use appropriate vehicles such as electric carts or small utility vehicles instead of trucks, or
    - j. Apply and maintain pavement or cement feed lanes.
- C.** A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens:
    - a. Concrete aprons,
    - b. Provide shade in corral,
    - c. Add moisture to pen surface,
    - d. Manure removal,
    - e. Pile manure between cleanings,
    - f. Feed higher moisture feed to beef cattle,
    - g. Control cattle during movements,
    - h. Use drag equipment to maintain pens,
    - i. Apply a fibrous layer, or
    - j. Wind barrier.
  2. Animal Waste (and Feed) Handling and Transporting:

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- a. Feed higher moisture feed to beef cattle,
  - b. Add molasses or tallow to feed,
  - c. Store and maintain feed stock,
  - d. Bulk materials,
  - e. Use drag equipment to maintain pens,
  - f. Cover manure hauling trucks, or
  - g. Do not load manure when wind exceeds 15 mph.
3. Unpaved Access Connections:
- a. Install and maintain a track-out control device,
  - b. Apply and maintain pavement in high traffic areas,
  - c. Apply and maintain aggregate cover,
  - d. Apply and maintain synthetic particulate suppressant, or
  - e. Apply and maintain water as a dust suppressant.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed truck to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict access to through traffic,
  - e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant,
  - h. Apply and maintain water as a dust suppressant, or
  - i. Apply and maintain oil on roads or feed lanes.
- D.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
- a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
  - b. Use no bedding,
  - c. Control vegetation on building exteriors;
  - d. Add moisture through ventilation systems, or
  - e. House in fully enclosed ventilated buildings.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
  - b. Store feed,
  - c. Add oil and/or moisture to the feed,
  - d. Use enclosed feed distribution system,
  - e. Use flexible discharge spout,
  - f. Minimize drop distance,
  - g. Enclose transfer points,
  - h. Clean floors and walls in a commercial poultry facility,
  - i. Clean aisles between cage rows,
  - j. Stack separated manure solids, or
  - k. Maintain moisture in manure solids.
3. Unpaved Access Connections:
- a. Install speed control devices,
  - b. Restrict traffic access,
  - c. Install and maintain a track-out control system, or
  - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict traffic access,
  - e. Apply and maintain aggregate cover,
  - f. Apply and maintain synthetic particulate suppressant,
  - g. Apply and maintain water, or
  - h. Apply and maintain oil on roads or feed lanes.
- E.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
- a. House in fully enclosed ventilated buildings,
  - b. Use no bedding,
  - c. Use a slatted floor system,
  - d. Use sloped concrete flooring,
  - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
  - f. Control vegetation on building exteriors, or
  - g. Add moisture through ventilation systems.
2. Animal Waste (and Feed) Handling and Transporting:
- a. Remove spilled feed,
  - b. Store feed,
  - c. Add oil and/or moisture to feed,
  - d. Use enclosed feed distribution system,
  - e. Use flexible discharge spout,
  - f. Minimize drop distance,
  - g. Enclose transfer points,
  - h. Clean pens, floors, and walls in a commercial swine facility,
  - i. Clean aisles between pens and stalls,
  - j. Store separated manure solids in a wind-blocked area,
  - k. Stack separated manure solids,
  - l. Maintain moisture in manure solids, or
  - m. Maintain liquid lagoon level.
3. Unpaved Access Connections:
- a. Install speed control devices,
  - b. Restrict traffic access,
  - c. Install and maintain a track-out control system,
  - d. Install signage to limit vehicle speed to 15 mph.
4. Unpaved Roads or Feed Lanes:
- a. Install engine speed governors on feed trucks to 15 mph,
  - b. Install signage to limit vehicle speed to 15 mph,
  - c. Install speed control devices,
  - d. Restrict traffic access,
  - e. Apply and maintain aggregate cover,
  - f. Apply and maintain synthetic particulate suppressant,
  - g. Apply and maintain water,
  - h. Apply and maintain oil on roads or feed lanes, or
  - i. Wind barrier.
- F.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
  2. The mailing address or physical address of the commercial animal operation, and
  3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- G.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the

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complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.

- H. A person may develop different practices not contained in subsection (B), (C), (D), or (F) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- I. The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- J. A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- K. The Director shall document noncompliance with this Section before issuing a compliance order.
- L. A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

**Historical Note**

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-611.03. Agricultural PM General Permit for Animal Operations; Pinal County PM Nonattainment Area**

- A. A commercial animal operator within the Pinal County PM Nonattainment Area shall implement at least one best management practice from each category to reduce PM emissions.
- B. In addition to subsection (A), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast, commercial dairy operations within the Pinal County PM Nonattainment Area shall apply and maintain one of the four following BMPs on unpaved roads that experience more than 20 VDT from 2 or more axle vehicles:
  - 1. Apply and maintain pavement in high traffic areas,
  - 2. Apply and maintain aggregate cover,
  - 3. Apply and maintain synthetic particulate suppressant, or
  - 4. Apply and maintain water as a dust suppressant.
- C. In addition to subsection (A), commercial beef feedlots within the Pinal County PM Nonattainment Area, shall add water to pen surface, as defined in R18-2-611(3)(a), on the day that is forecast to be high risk for dust generation by the Pinal County Dust Control Forecast.
- D. A commercial dairy operation shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Use free stall housing,
    - b. Provide shade in corral,
    - c. Provide cooling in corral,
    - d. Cement cattle walkways to milk barn,
    - e. Groom manure surface,
    - f. Water misting systems,
    - g. Use drag equipment to maintain pens,
    - h. Pile manure between cleanings,
    - i. Feed green chop,
    - j. Keep calves in barns or hutches,
    - k. Do not run cattle,
    - l. Apply a fibrous layer, or
    - m. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to dairy cattle,
    - b. Store and maintain feed stock,
    - c. Covers for silage,
    - d. Store silage in bunkers,
    - e. Cover manure hauling trucks, or
    - f. Do not load manure trucks with dry manure when wind exceeds 15 mph.
- E. A commercial beef cattle feedlot shall implement the following best management practices, as described in subsection (A), from each of the following categories:
  - 1. Arenas, Corrals, and Pens:
    - a. Concrete aprons,
    - b. Provide shade in corral,
    - c. Add water to pen surface,
    - d. Manure removal,
    - e. Pile manure between cleanings,
    - f. Feed higher moisture feed to beef cattle,
    - g. Control cattle during movements,
    - h. Use drag equipment to maintain pens,
    - i. Apply a fibrous layer, or
    - j. Wind barrier.
  - 2. Animal Waste (and Feed) Handling and Transporting:
    - a. Feed higher moisture feed to beef cattle;
    - b. Add molasses or tallow to feed,
    - c. Store and maintain feed stock,
    - d. Bulk materials,
    - e. Use drag equipment to maintain pens,
    - f. Cover manure hauling trucks, or
    - g. Do not load manure when wind exceeds 15 mph.
  - 3. Unpaved Access Connections:
    - a. Install and maintain a track-out control device,
    - b. Apply and maintain pavement in high traffic areas,
    - c. Apply and maintain aggregate cover,
    - d. Apply and maintain synthetic particulate suppressant, or
    - e. Apply and maintain water as a dust suppressant.
  - 4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed truck to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict access to through traffic,

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- e. Apply and maintain pavement in high traffic areas,
  - f. Apply and maintain aggregate cover,
  - g. Apply and maintain synthetic particulate suppressant,
  - h. Apply and maintain water as a dust suppressant, or
  - i. Apply and maintain oil on roads or feed lanes.
- F.** A commercial poultry facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
    - a. Clean fans, louvers, and soffit inlets in a commercial poultry facility,
    - b. Use no bedding,
    - c. Control vegetation on building exteriors,
    - d. Add moisture through ventilation systems, or
    - e. House in fully enclosed ventilated buildings.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to the feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,
    - h. Clean floors and walls in a commercial poultry facility,
    - i. Clean aisles between cage rows,
    - j. Stack separated manure solids, or
    - k. Maintain moisture in manure solids.
  3. Unpaved Access Connections:
    - a. Install speed control devices,
    - b. Restrict traffic access,
    - c. Install and maintain a track-out control system, or
    - d. Install signage to limit vehicle speed to 15 mph.
  4. Unpaved Roads or Feed Lanes:
    - a. Install engine speed governors on feed trucks to 15 mph,
    - b. Install signage to limit vehicle speed to 15 mph,
    - c. Install speed control devices,
    - d. Restrict traffic access,
    - e. Apply and maintain aggregate cover,
    - f. Apply and maintain synthetic particulate suppressant,
    - g. Apply and maintain water,
    - h. Apply and maintain oil on roads or feed lanes, or
    - i. Wind barrier.
- H.** From and after December 31, 2015, a commercial animal operator who engages in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the commercial animal operator. The Best Management Practices Program General Permit Record Form shall include the following information:
1. The name of the commercial animal operator, signature, and date signed,
  2. The mailing address or physical address of the commercial animal operation, and
  3. The best management practices selected for Arenas, Corrals, and Pens, Animal Waste Handling and Transporting, Unpaved Access Connections, and Unpaved Roads or Feed Lanes.
- I.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director shall provide the commercial animal operator with a Best Management Practices Program 3-year Survey. The commercial animal operator shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA in a format that does not refer to a commercial animal operator's name, shall aggregate the data from the Surveys received, and be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the commercial farmer responsible for the preparation and implementation of the best management practices;
  2. The signature of the commercial farmer and the date the form was signed;
  3. The number of animals in a commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
  4. The total miles of unpaved roads at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
- G.** A commercial swine facility shall implement the following best management practices, as described in subsection (A), from each of the following categories:
1. Arenas, Corrals, and Pens (Housing):
    - a. House in fully enclosed ventilated buildings,
    - b. Use no bedding,
    - c. Use a slatted floor system,
    - d. Use sloped concrete flooring,
    - e. Clean fans, louvers, and soffit inlets in a commercial swine facility,
    - f. Control vegetation on building exteriors, or
    - g. Add moisture through ventilation systems.
  2. Animal Waste (and Feed) Handling and Transporting:
    - a. Remove spilled feed,
    - b. Store feed,
    - c. Add oil and/or moisture to feed,
    - d. Use enclosed feed distribution system,
    - e. Use flexible discharge spout,
    - f. Minimize drop distance,
    - g. Enclose transfer points,

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5. The total acreage of the unpaved access connections and equipment areas at the commercial dairy operation, beef cattle feed lot, poultry facility or swine facility;
6. The best management practices selected for each category; and
7. For commercial dairy operations and beef cattle feedlots, an acknowledgement that water was applied on the day of a high risk day as predicted by the Pinal County Dust Control Forecast.
- J.** Beginning January 1, 2016, a commercial animal operator shall maintain records demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice and any changes to the best management practices. Records shall be kept by the commercial animal operator onsite and made available for review by the Director within two business days of notice to the commercial animal operator.
- K.** A person may develop different practices not contained in subsection (D), (E), (F), or (G) that reduce PM and may submit such practices that are proven effective through on-operation demonstration trials to the Committee. The new best management practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- L.** The Director shall not assess a fee to a commercial animal operator for coverage under the agricultural PM general permit.
- M.** A commercial animal operator shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- N.** The Director shall document noncompliance with this Section before issuing a compliance order.
- O.** A commercial animal operator who is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).
6. “Canals” means facilities constructed for the sole purpose of the control, conveyance, and delivery of water. These facilities may be either open earthen channels, lined or unlined, or buried pipelines, which are used to convey water uphill and under obstructions, such as roadways and wash and river channels. These facilities include, but are not limited to, gate, inlet, outlet, safety, and measuring structures required to control water along the canals and deliver water to irrigation district customers, as well as compacted earthen banks constructed to protect these facilities from storm runoff events.
7. “Committee” means the Governor’s Agricultural Best Management Practices Committee.
8. “Debris” means trash, rubble, and other non-soil materials.
9. “Dredge canals” means reducing PM emissions by mechanically removing muck, debris, and other foreign objects from canals while material is still wet or damp.
10. “Dust Control Forecast” means a forecast, which shall identify a low, moderate or high risk of dust generation for the next five consecutive days and shall be issued by noon on each day the forecast is generated. When developing these forecasts, the department shall consider all of the following:
- Projected meteorological conditions, including:
    - Wind speed and direction,
    - Stagnation,
    - Recent precipitation, and
    - Potential for precipitation;
  - Existing concentrations of air pollution at the time of the forecast; and
  - Historic air pollution concentrations that have been observed during meteorological conditions similar to those that are predicted to occur in the forecast.
11. “Earth materials” means natural materials covering the ground surface, which includes, but are not limited to, dirt, rocks, or soil.
12. “Grading roadways” means mechanically smoothing and compacting the roadway surface.
13. “Irrigation District” means a political subdivision, governed by title 48, chapter 19.
14. “Limit activity” means performing only critical operational or emergency activity on a day forecast to be high risk for dust generation as forecasted by the Pinal County Dust Control Forecast.
15. “Major earth moving activities” means the mechanical movement of earth materials to reconstruct, relocate, reshape, reconfigure canals, including operation and maintenance roads and utility access roads.
16. “Maricopa PM nonattainment area” means the Phoenix planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.
17. “Minor earth moving activities” means the mechanical movement of earth materials to repair and maintain the existing configuration, location, bank slopes, or inclines of canals.
18. “Muck” means water that is saturated with mud, dirt, and soil, which accumulates over time along the bottom of canals.

**Historical Note**

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-612. Definitions for R18-2-612.01**

The definitions in R18-2-101 and the following definitions apply to R18-2-612.01:

- “Access restriction” means reducing PM emission by reducing the number of trips driven on unpaved operation and maintenance and unpaved utility roads by restricting or eliminating public access by the use of signs or physical obstruction at locations that effectively control access to roads.
- “Aggregate cover” means reducing PM emissions, wind erosion and stabilizing soil by applying and maintaining gravel, concrete, recycled road base, caliche, or other similar material to unpaved roads. The aggregate should be clean, hard and durable, and should be applied a depth sufficient to create soil stabilization in accordance with material specifications. A minimum depth of three inches is the standard in the absence of such specifications.
- “Apply and maintain water” means reducing PM emissions and wind erosion by applying water to bare soil surfaces until the surfaces are visibly moist.
- “Best management practice” means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM emissions from a regulated agricultural activity.
- “Biological control of aquatic weeds” means reducing at least one trip, or to one trip if only one trip is needed, per

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19. "Paved Public Road" means any paved roadways that are open to public travel and maintained by a City, County, or the State.
20. "Pinal County PM Nonattainment Area" means the West Pinal PM<sub>10</sub> planning area and the West Central PM<sub>2.5</sub> planning area, as defined in 40 CFR 81.303, and incorporated by reference in R18-2-210.
21. "PM" includes both particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on 40 CFR 50 Appendix L, or by an equivalent method designated according to 40 CFR 53; and particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method contained within 40 CFR 50 Appendix J or by an equivalent method designated in accordance with 40 CFR 53, as incorporated by reference in Appendix 2.
22. "Reduce vehicle speed" means reducing PM emissions and soil erosion from the use of vehicles owned or operated by the irrigation district on unpaved operation, maintenance, and utility access roads, at speeds not to exceed 25 mph. This can be achieved through worker behavior modifications, signage, or any other necessary means.
23. "Regulated agricultural activity" means activities of an irrigation district, which affects those lands and facilities that are under the jurisdiction and control of an irrigation district, as described in § 49-457(P)(1)(f) and A.R.S. § 49-457(P)(5)(b).
24. "Regulated area" means a regulated area as defined in A.R.S. § 49-457(P)(6)(c).
25. "Sediment" means muck that has dried after removal from canals.
26. "Supervisory control system" means a system that allows the irrigation district to control operational structures from a remote computer location in order to reduce at least one trip made by vehicles to access structures for operational purposes.
27. "Synthetic or natural particulate suppressant" means reducing PM emissions and wind erosion by providing a stabilized soil surface with organic material, such as muck, animal waste or biosolids, or with a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, an emulsion of a petroleum product, an enzyme product, or polyacrylamide.
28. "Track-out control system" means minimizing any and all material that adheres to and agglomerates on all vehicles and equipment and falls onto paved public roads or shoulders to paved public roads by using a device or system to remove mud or soil from a vehicle or equipment before the vehicle enters a paved public road. Devices such as a grizzly, a gravel pad or a wheel wash system can be used.
29. "Unauthorized use" means any travel or access by non-district personnel in non-district vehicles along roadways under the control of an irrigation district without the permission of the irrigation district.
30. "Unpaved operation and maintenance roads" means unpaved roadways that lay adjacent to canals, which provide access for irrigation district personnel and equipment for direct operation and maintenance of canals, and are under the control of the irrigation district.
31. "Unpaved utility access roads" means unpaved roadways used to provide access to canals, and also includes office and shop facilities, equipment yards, staging areas and other lands under the control of the irrigation district.
32. "Weed management" means reducing at least one trip made by vehicles for the purposes of removing weeds by using a combination of techniques, including organic, chemical, or biological means, to control weeds along canal banks and land surfaces not used for conveying water, excluding unpaved roadways.
33. "Wind barrier" means reducing PM<sub>10</sub> emissions and wind erosion by constructing a fence or structure, or providing a woody vegetative barrier by planting a row of trees or shrubs, perpendicular or across the prevailing wind direction to reduce wind speed by changing the pattern of air flow over the land surface. For fences and structures, the wind barrier shall have a density of no less than 50% and the height of the wind barrier must be proportionate to the downwind protected area. The downwind protected area is considered ten times the height of the wind barrier. For vegetative barriers, compliance shall be determined by NRCS Conservation Practice Standard, Code 380, Windbreak/Shelterbelt Establishment, amended through August 21, 2009 (and no future editions).

**Historical Note**

New Section R18-2-612 renumbered from R18-2-610 at 6 A.A.R. 2009, effective May 12, 2000 (Supp. 00-2). Former Section R18-2-612 renumbered to R18-2-614; new Section R18-2-612 made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-612.01. Agricultural PM General Permit For Irrigation Districts; PM Nonattainment Areas Designated After June 1, 2009**

- A. An irrigation district within a PM Nonattainment Area, designated after June 1, 2009, shall implement at least one best management practice from each of the following categories to reduce PM emissions:
1. Unpaved operation and maintenance roads:
    - a. Access restriction,
    - b. Apply and maintain aggregate cover,
    - c. Install supervisory control system to limit vehicle travel,
    - d. Limit activity,
    - e. Install signage to limit vehicle speed to 25 mph,
    - f. Post warning signs for unauthorized use at point of entry to roads,
    - g. Reduce vehicle speed,
    - h. Install and maintain a track-out control system,
    - i. Apply and maintain synthetic or natural particulate suppressant,
    - j. Apply and maintain water before, during, and after major and minor earth moving activities,
    - k. Apply and maintain water when grading roadways,
    - l. Use paved non-district or paved public roads to access structures, or
    - m. Install wind barriers.
  2. Canals:
    - a. Dredge canals while muck or debris is still wet,
    - b. Dispose of muck or debris while still damp,
    - c. Weed management,
    - d. Biological control of aquatic weeds, or
    - e. Apply and maintain water before, during and after major and minor earth moving activities.
  3. Unpaved utility access roads:
    - a. Access restriction,
    - b. Apply and maintain aggregate cover,

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- c. Limit activity,
  - d. Install signage to limit vehicle speed to 25 mph,
  - e. Post warning signs for unauthorized use at points of entry to roads,
  - f. Reduce vehicle speed,
  - g. Install and maintain a track-out control system,
  - h. Apply and maintain pavement,
  - i. Apply and maintain synthetic or natural particulate suppressant,
  - j. Apply and maintain water before, during and after major and minor earth moving activities,
  - k. Apply and maintain water when grading roadways,
  - l. Use paved non-district or paved public roads to access structures, or
  - m. Install wind barriers.
- B.** From and after December 31, 2015, an irrigation district engaged in a regulated agricultural activity shall complete a Best Management Practices Program General Permit Record Form. Thereafter, a new Best Management Practices Program General Permit Record Form shall be completed every year by March 31. The Form shall be provided to the Director within two business days of notice to the irrigation district. The Best Management Practice Program General Permit Record form shall include the following information:
1. The name, business address, and the irrigation district representative responsible for the preparation and implementation of the best management practices;
  2. The signature of the irrigation district representative and the date the form was signed; and
  3. The best management practice selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- C.** Beginning in calendar year 2017, and no more than once every subsequent three calendar years, the Director, in conjunction with the Arizona Department of Agriculture, shall provide the irrigation district with a Best Management Practices Program 3-year Survey. The irrigation district shall complete the Survey with data from the preceding calendar year and submit the Survey to the Arizona Department of Agriculture (ADA) by January 31, 2018, and every three years thereafter. The Survey information submitted to the ADA shall be compiled by the ADA then be submitted to the Department. The 3-year Survey shall include the following information:
1. The name, business address, and phone number of the irrigation district representative responsible for the preparation and implementation of the best management practices;
  2. The signature of the irrigation district representative and the date the form was signed;
  3. The total miles of canals that the irrigation district controls;
  4. The total miles of unpaved operation and maintenance roads;
  5. The total miles of the unpaved utility access roads; and
  6. The best management practices selected for unpaved operation and utility roads, canals, and unpaved utility access roads.
- D.** Records of any changes to those Best Management Practices shall be noted on the Best Management Practices Program General Permit Record Form and shall be kept by the irrigation district onsite and made available for review by the Director within two business days of notice to the irrigation district by the Department.
- E.** An irrigation district may develop different practices not contained in either of the categories of subsection (A)(1), (A)(2), or (A)(3) that reduce PM and may submit such practices that are proven effective through in-district trials. The proposed new practices shall not become effective unless submitted as described in A.R.S. § 49-457(L).
- F.** An irrigation district shall maintain a record demonstrating compliance with this Section for three years. Records shall include a copy of the complete Best Management Practice Program General Permit Record Form to confirm implementation of each best management practice.
- G.** The Director shall not assess a fee to an irrigation district for coverage under the agricultural PM general permit.
- H.** An irrigation district shall ensure that the implementation of all selected best management practices does not violate any other local, state, or federal law.
- I.** The Director shall document noncompliance with this Section before issuing a compliance order.
- J.** An irrigation district that is not in compliance with this Section is subject to the provisions in A.R.S. § 49-457(I), (J), and (K).

**Historical Note**

New Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-613. Definitions for R18-2-613.01**

1. "Access restriction" means restricting or eliminating public access to noncropland with signs or physical obstruction.
2. "Aggregate cover" means gravel, concrete, recycled road base, caliche, or other similar material applied to noncropland.
3. "Artificial wind barrier" means a physical barrier to the wind.
4. "Bed row spacing" means increasing or decreasing the size of a planting bed area to reduce the number of passes and soil disturbance by increasing plant density.
5. "Best management practice" means a technique verified by scientific research, that on a case-by-case basis is practical, economically feasible, and effective in reducing PM<sub>10</sub> emissions from a regulated agricultural activity.
6. "Chemical irrigation" means applying a fertilizer, pesticide, or other agricultural chemical to cropland through an irrigation system.
7. "Combining tractor operations" means performing two or more tillage, cultivation, planting, or harvesting operations with a single tractor or harvester pass.
8. "Commercial farm" means 10 or more contiguous acres of land used for agricultural purposes within the boundary of the Yuma PM<sub>10</sub> nonattainment area.
9. "Commercial farmer" means an individual, entity, or joint operation in general control of a commercial farm.
10. "Conservation irrigation" means the use of drips, sprinklers, or underground lines to conserve water, and to reduce the weed population, the need for tillage, and soil compaction.
11. "Conservation tillage" means types of tillage that reduce the number of passes and the amount of soil disturbance.
12. "Cover crop" means plants or a green manure crop grown for seasonal soil protection or soil improvement.
13. "Critical area planting" means using trees, shrubs, vines, grasses, or other vegetative cover on noncropland.
14. "Cropland" means land on a commercial farm that:
  - a. Is within the time-frame of final harvest to plant emergence;
  - b. Has been tilled in a prior year and is suitable for crop production, but is currently fallow; or
  - c. Is a turn-row.

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15. "Cross-wind ridges" means soil ridges formed by a tillage operation.
16. "Cross-wind strip-cropping" means planting strips of alternating crops within the same field.
17. "Cross-wind vegetative strips" means herbaceous cover established in one or more strips within the same field.
18. "Equipment modification" means modifying agricultural equipment to prevent or reduce particulate matter generation from cropland.
19. "Limited activity during a high-wind event" means performing no tillage or soil preparation activity when the measured wind speed at six feet in height is more than 25 mph at the commercial farm site.
20. "Manure application" means applying animal waste or biosolids to a soil surface.
21. "Mulching" means applying plant residue or other material that is not produced onsite to a soil surface.
22. "Multi-year crop" means a crop, pasture, or orchard that is grown, or will be grown, on a continuous basis for more than one year.
23. "Night farming" means performing regulated agricultural activities at night when moisture levels are higher and winds are lighter.
24. "Noncropland" means any commercial farmland that:
  - a. Is no longer used for agricultural production;
  - b. Is no longer suitable for production of crops;
  - c. Is subject to a restrictive easement or contract that prohibits use for the production of crops; or
  - d. Includes a private farm road, ditch, ditch bank, equipment yard, storage yard, or well head.
25. "Permanent cover" means a perennial vegetative cover on cropland.
26. "Planting based on soil moisture" means applying water to soil before performing planting operations.
27. "Precision farming" means use of satellite navigation to calculate position in the field, to reduce overlap during field operations, and allow operations to occur during nighttime and inclement weather, thus generating less PM<sub>10</sub>.
28. "Reduce vehicle speed" means operating farm vehicles or farm equipment on unpaved farm roads at speeds not to exceed 20 mph.
29. "Reduced harvest activity" means reducing the number of harvest passes using a mechanized method to cut and remove crops from a field.
30. "Regulated agricultural activity" means a commercial farming practice that may produce PM<sub>10</sub> within the Yuma PM<sub>10</sub> nonattainment area.
31. "Residue management" means managing the amount and distribution of crop and other plant residues on a soil surface.
32. "Sequential cropping" means growing crops in a sequence that minimizes the amount of time bare soil is exposed on a field.
33. "Surface roughening" means manipulating a soil surface to produce or maintain clods.
34. "Synthetic particulate suppressant" means a manufactured product such as lignosulfate, calcium chloride, magnesium chloride, and polyacrylamide, an emulsion of a petroleum product, and an enzyme product that is used to control particulate matter.
35. "Tillage and harvest" means any mechanical practice that physically disturbs cropland or crops on a commercial farm.
36. "Tillage based on soil moisture" means applying water to soil before or during tillage, or delaying tillage to coincide with precipitation.
37. "Timing of a tillage operation" means performing tillage operations at a time that will minimize the soil's susceptibility to generate PM<sub>10</sub>.
38. "Transgenic crops" means the use of genetically modified crops such as "herbicide ready" crops, which reduces the need for tillage or cultivation operations, and reduces soil disturbance.
39. "Track-out control system" means a device to remove mud or soil from a vehicle before the vehicle enters a paved public road.
40. "Tree, shrub, or windbreak planting" means providing a woody vegetative barrier to the wind.
41. "Watering" means applying water to noncropland.
42. "Yuma PM<sub>10</sub> nonattainment area" means the Yuma PM<sub>10</sub> planning area as defined in 40 CFR 81.303, which is incorporated by reference in R18-2-210.

**Historical Note**

New Section made by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Section R18-2-313 renumbered to R18-2-313.01; new Section made by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-613.01. Yuma PM<sub>10</sub> Nonattainment Area; Agricultural Best Management Practices**

- A.** A commercial farmer shall comply with this Section by August 1, 2005.
- B.** A commercial farmer who begins a regulated agricultural activity after August 1, 2005, shall comply with this Section within 60 days after beginning the regulated agricultural activity.
- C.** A commercial farmer shall implement at least one of the best management practices from each of the following categories at each commercial farm:
  1. Tillage and harvest, subsection (E);
  2. Noncropland, subsection (F); and
  3. Cropland, subsection (G).
- D.** A commercial farmer shall ensure that the implementation of each selected best management practice does not violate any other local, state, or federal law.
- E.** A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from tillage and harvest:
  1. Bed row spacing,
  2. Chemical irrigation,
  3. Combining tractor operations,
  4. Conservation irrigation,
  5. Conservation tillage,
  6. Equipment modification,
  7. Limited activity during a high-wind event,
  8. Multi-year crop,
  9. Night farming,
  10. Planting based on soil moisture,
  11. Precision farming,
  12. Reduced harvest activity,
  13. Tillage based on soil moisture,
  14. Timing of a tillage operation, or
  15. Transgenic crops.
- F.** A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from noncropland:
  1. Access restriction;
  2. Aggregate cover;

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3. Artificial wind barrier;
  4. Critical area planting;
  5. Manure application;
  6. Reduce vehicle speed;
  7. Synthetic particulate suppressant;
  8. Track-out control system;
  9. Tree, shrub, or windbreak planting; or
  10. Watering.
- G.** A commercial farmer shall implement at least one of the following best management practices to reduce PM<sub>10</sub> emissions from cropland:
1. Artificial wind barrier;
  2. Cover crop;
  3. Cross-wind ridges;
  4. Cross-wind strip-cropping;
  5. Cross-wind vegetative strips;
  6. Manure application;
  7. Mulching;
  8. Multi-year crop;
  9. Permanent cover;
  10. Planting based on soil moisture;
  11. Precision farming;
  12. Residue management;
  13. Sequential cropping;
  14. Surface roughening; or
  15. Tree, shrub, or windbreak planting.
- H.** A person may develop different practices not contained in subsections (E), (F), or (G) that reduce PM<sub>10</sub>. A person may submit practices that are proven effective through demonstration trials to the Director. The Director shall review the submitted practices.
- I.** A commercial farmer shall maintain records demonstrating compliance with this Section. The commercial farmer shall provide the records to the Director within two business days of written notice to the commercial farmer. The records shall contain:
1. The name of the commercial farmer,
  2. The mailing address or physical location of the commercial farm, and
  3. The best management practices selected for tillage and harvest, noncropland, and cropland by the commercial farmer, and the date each best management practice was implemented.

**Historical Note**

New Section R18-2-313.01 renumbered from Section R18-2-313 by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3).

**R18-2-614. Evaluation of Nonpoint Source Emissions**

Opacity of an emission from any nonpoint source shall not be greater than 40% measured according to the 40 CFR 60, Appendix A, Reference Method 9. An open fire permitted under R18-2-602 or regulated under Article 15 is exempt from this requirement.

**Historical Note**

Section R18-2-614 renumbered from R18-2-612; amended by final rulemaking at 11 A.A.R. 2210, effective July 18, 2005 (Supp. 05-2). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS****R18-2-701. Definitions**

For purposes of this Article:

1. "Acid mist" means sulfuric acid mist as measured in the Arizona Testing Manual and 40 CFR 60, Appendix A.
2. "Architectural coating" means a coating used commercially or industrially for residential, commercial or industrial buildings and their appurtenances, structural steel, and other fabrications such as storage tanks, bridges, beams and girders.
3. "Asphalt concrete plant" means any facility used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt cements. This is limited to facilities, including drum dryer plants that introduce asphalt into the dryer, which employ two or more of the following processes:
  - a. A dryer.
  - b. Systems for screening, handling, storing, and weighing hot aggregate.
  - c. Systems for loading, transferring, and storing mineral filler.
  - d. Systems for mixing asphalt concrete.
  - e. The loading, transferring, and storage systems associated with emission control systems.
4. "Black liquor" means waste liquor from the brown stock washer and spent cooking liquor which have been concentrated in the multiple-effect evaporator system.
5. "Calcine" means the solid materials produced by a lime plant.
6. "Coal" means any solid fuel classified as anthracite, bituminous, subbituminous, or lignite by the ASTM Method D388-05 "Standard Classification of Coals by Rank" and coal refuse. Synthetic fuels derived from coal for the purpose of creating useful heat including but not limited to, coal derived gases (not meeting the definition of natural gas), solvent-refined coal, coal-oil mixtures, and coal-water mixtures, are considered "coal" for the purposes of this subpart.
7. "Coal refuse" means any by-product of coal mining, physical coal cleaning, and coal preparation operations (e.g., culm, gob, etc.) containing coal, matrix material, clay, and other organic and inorganic material with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (6,000 Btu per pound) on a dry basis.
8. "Concentrate" means enriched copper ore recovered from the froth flotation process.
9. "Concentrate dryer" means any facility in which a copper sulfide ore concentrate charge is heated in the presence of air to eliminate a portion of the moisture from the charge, provided less than 5% of the sulfur contained in the charge is eliminated in the facility.
10. "Concentrate roaster" means any facility in which a copper sulfide ore concentrate is heated in the presence of air to eliminate 5% or more of the sulfur contained in the charge.
11. "Condensate stripper system" means a column, and associated condensers, used to strip, with air or steam, TRS compounds from condensate streams from various processes within a kraft pulp mill.
12. "Control device" means the air pollution control equipment used to remove particulate matter or gases generated by a process source from the effluent gas stream.
13. "Converter" means any vessel to which copper matte is charged and oxidized to copper.
14. "Electric generating plant" means all electric generating units located at a stationary source.
15. "Electric generating unit" means a combustion unit of more than 25 megawatts electric that serves a generator

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- that produces electricity for sale and that burns coal for more than 10.0 percent of the average annual heat input during any three consecutive calendar years or for more than 15.0 percent of the annual heat input during any one calendar year. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electric output to any utility power distribution system for sale is considered an electric generating unit.
16. "Existing source" means any source which does not have an applicable new source performance standard under Article 9 of this Chapter.
  17. "Facility" means an identifiable piece of stationary process equipment along with all associated air pollution equipment.
  18. "Federal mercury standards" means the emissions limits, monitoring, testing, recordkeeping, reporting and notification requirements applicable or relating to emissions of mercury from electric generating units under 40 CFR Part 63, Subpart UUUUU.
  19. "Fugitive dust" means fugitive emissions of particulate matter.
  20. "High sulfur oil" means fuel oil containing 0.90% or more by weight of sulfur.
  21. "Inlet mercury" means the average concentration of mercury in the coal burned at an electric generating unit, as determined by ASTM methods, EPA-approved methods or alternative methods approved by the Director.
  22. "Lime kiln" means a unit used to calcinate lime rock or kraft pulp mill lime mud, which consists primarily of calcium carbonate, into quicklime, which is calcium oxide.
  23. "Low sulfur oil" means fuel oil containing less than 0.90% by weight of sulfur.
  24. "Matte" means a metallic sulfide made by smelting copper sulfide ore concentrate or the roasted product of copper sulfide ores.
  25. "Mercury" means mercury or mercury compounds in either a gaseous or particulate form.
  26. "Miscellaneous metal parts and products" for purposes of industrial coating include all of the following:
    - a. Large farm machinery, such as harvesting, fertilizing and planting machines, tractors, and combines;
    - b. Small farm machinery, such as lawn and garden tractors, lawn mowers, and rototillers;
    - c. Small appliances, such as fans, mixers, blenders, crock pots, dehumidifiers, and vacuum cleaners;
    - d. Commercial machinery, such as office equipment, computers and auxiliary equipment, typewriters, calculators, and vending machines;
    - e. Industrial machinery, such as pumps, compressors, conveyor components, fans, blowers, and transformers;
    - f. Fabricated metal products, such as metal-covered doors and frames;
    - g. Any other industrial category which coats metal parts or products under the Code in the "Standard Industrial Classification Manual, 1987" of Major Group 33 (primary metal industries), Major Group 34 (fabricated metal products), Major Group 35 (non-electric machinery), Major Group 36 (electrical machinery), Major Group 37 (transportation equipment), Major Group 38 (miscellaneous instruments), and Major Group 39 (miscellaneous manufacturing industries), except all of the following:
      - i. Automobiles and light-duty trucks;
      - ii. Metal cans;
      - iii. Flat metal sheets and strips in the form of rolls or coils;
      - iv. Magnet wire for use in electrical machinery;
      - v. Metal furniture;
      - vi. Large appliances;
      - vii. Exterior of airplanes;
      - viii. Automobile refinishing;
      - ix. Customized top coating of automobiles and trucks, if production is less than 35 vehicles per day;
      - x. Exterior of marine vessels.
  27. "Multiple-effect evaporator system" means the multiple-effect evaporators and associated condenser and hotwell used to concentrate the spent cooking liquid that is separated from the pulp.
  28. "Neutral sulfite semichemical pulping" means any operation in which pulp is produced from wood by cooking or digesting wood chips in a solution of sodium sulfite and sodium bicarbonate, followed by mechanical defibrating or grinding.
  29. "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in ASTM D396-90a (Specification for Fuel Oils), gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D2880-90a (Specification for Gas Turbine Fuel Oils), or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D975-90 (Specification for Diesel Fuel Oils).
  30. "Potential electric output capacity" means 33% of a unit's maximum design heat input, divided by 3,413 Btu per kilowatt-hour, divided by 1,000 kilowatt-hours per megawatt-hour, and multiplied by 8,760 hours per year.
  31. "Process source" means the last operation or process which produces an air contaminant resulting from either:
    - a. The separation of the air contaminants from the process material, or
    - b. The conversion of constituents of the process materials into air contaminants which is not an air pollution abatement operation.
  32. "Process weight" means the total weight of all materials introduced into a process source, including fuels, where these contribute to pollution generated by the process.
  33. "Process weight rate" means a rate established pursuant to R18-2-702(E).
  34. "Recovery furnace" means the unit, including the direct-contact evaporator for a conventional furnace, used for burning black liquor to recover chemicals consisting primarily of sodium carbonate and sodium sulfide.
  35. "Reid vapor pressure" means the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D-323-90 (Test Method for Vapor Pressure of Petroleum Products) (Reid Method).
  36. "Reveratory smelting furnace" means any vessel in which the smelting of copper sulfide ore concentrates or calcines is performed and in which the heat necessary for smelting is provided primarily by combustion of a fossil fuel.
  37. "Rotary lime kiln" means a unit with an included rotary drum which is used to produce a lime product from limestone by calcination.
  38. "Slag" means fused and vitrified matter separated during the reduction of a metal from its ore.

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39. "Smelt dissolving tank" means a vessel used for dissolving the smelt collected from the kraft mill recovery furnace.
40. "Smelter feed" means all materials utilized in the operation of a copper smelter, including metals or concentrates, fuels and chemical reagents, calculated as the aggregate sulfur content of all fuels and other feed materials whose products of combustion and gaseous by-products are emitted to the atmosphere.
41. "Smelting" means processing techniques for the smelting of a copper sulfide ore concentrate or calcine charge leading to the formation of separate layers of molten slag, molten copper, or copper matte.
42. "Smelting furnace" means any vessel in which the smelting of copper sulfide ore concentrates or calcines is performed and in which the heat necessary for smelting is provided by an electric current, rapid oxidation of a portion of the sulfur contained in the concentrate as it passes through an oxidizing atmosphere, or the combustion of a fossil fuel.
43. "Standard conditions" means a temperature of 293K (68°F or 20°C) and a pressure of 101.3 kilopascals (29.92 in. Hg or 1013.25 mb).
44. "Supplementary control system" (SCS) means a system by which sulfur dioxide emissions are curtailed during periods when meteorological conditions conducive to ground-level concentrations in excess of ambient air quality standards for sulfur dioxide either exist or are anticipated.
45. "Vapor pressure" means the pressure exerted by the gaseous form of a substance in equilibrium with its liquid or solid form.
- C. If the presence of uncombined water is the only reason for an exceedance of any visible emissions requirement in this Article, the exceedance shall not constitute a violation of the applicable opacity limit.
- D. A person owning or operating a source may petition the Director for an alternative applicable opacity limit. The petition shall be submitted to ADEQ by May 15, 2004.
1. The petition shall contain:
    - a. Documentation that the affected facility and any associated air pollution control equipment are incapable of being adjusted or operated to meet the applicable opacity standard. This includes:
      - i. Relevant information on the process operating conditions and the control devices operating conditions during the opacity or stack tests;
      - ii. A detailed statement or report demonstrating that the source investigated all practicable means of reducing opacity and utilized control technology that is reasonably available considering technical and economic feasibility; and
      - iii. An explanation why the source cannot meet the present opacity limit although it is in compliance with the applicable particulate mass emission rule.
    - b. If there is an opacity monitor, any certification and audit reports required by all applicable subparts in 40 CFR 60 and in Appendix B, Performance Specification 1.
    - c. A verification by a responsible official of the source of the truth, accuracy, and completeness of the petition. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
  2. If the unit for which the alternative opacity standard is being applied is subject to a stack test, the petition shall also include:
    - a. Documentation that the source conducted concurrent EPA Reference Method stack testing and visible emissions readings or is utilizing a continuous opacity monitor. The particulate mass emission test results shall clearly demonstrate compliance with the applicable particulate mass emission limitation by being at least 10% below that limit. For multiple units that are normally operated together and whose emissions vent through a single stack, the source shall conduct simultaneous particulate testing of each unit. Each control device shall be in good operating condition and operated consistent with good practices for minimizing emissions.
    - b. Evidence that the source conducted the stack tests according to R18-2-312, and that they were witnessed by the Director or the Director's agent or representative.
    - c. Evidence that the affected facility and any associated air pollution control equipment were operated and maintained to the maximum extent practicable to minimize the opacity of emissions during the stack tests.
  3. If the source for which the alternative opacity standard is being applied is located in a nonattainment area, the petitioner shall include all the information listed in subsections (D)(1) and (D)(2), and in addition:
    - a. In subsection (D)(1)(a)(ii), the detailed statement or report shall demonstrate that the alternative opacity

**Historical Note**

Former Section R18-2-701 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-701 renumbered from R18-2-501 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2). Amended by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

**R18-2-702. General Provisions**

- A. The provisions of this Article shall only apply to a source that is all of the following:
1. An existing source, as defined in R18-2-101;
  2. A point source. For the purposes of this Section, "point source" means a source of air contaminants that has an identifiable plume or emissions point; and
  3. A stationary source, as defined in R18-2-101.
- B. Except as otherwise provided in this Chapter relating to specific types of sources, the opacity of any plume or effluent, from a source described in subsection (A), as determined by Reference Method 9 in 40 CFR 60, Appendix A, shall not be:
1. Greater than 20% in an area that is nonattainment or maintenance for any particulate matter standard, unless an alternative opacity limit is approved by the Director and the Administrator as provided in subsections (D) and (E), after February 2, 2004;
  2. Greater than 40% in an area that is attainment or unclassifiable for each particulate matter standard; and
  3. After April 23, 2006, greater than 20% in any area that is attainment or unclassifiable for each particulate matter standard except as provided in subsections (D) and (E).

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limit fulfills the Clean Air Act requirement for reasonably available control technology; and

- b. In subsection (D)(2)(b), the stack tests shall be conducted with an opportunity for the Administrator or the Administrator's agent or representative to be present.
- E. If the Director receives a petition under subsection (D) the Director shall approve or deny the petition as provided below by October 15, 2004:
1. If the petition is approved under subsection (D)(1) or (D)(2), the Director shall include an alternative opacity limit in a proposed significant permit revision for the source under R18-2-320 and R18-2-330. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that an alternative opacity limit under this Section shall not be greater than 40%. For multiple units that are normally operated together and whose emissions vent through a single stack, any new alternative opacity limit shall reflect the opacity level at the common stack exit, and not individual in-duct opacity levels.
  2. If the petition is approved under subsection (D)(3), the Director shall include an alternative opacity limit in a proposed revision to the applicable implementation plan, and submit the proposed revision to EPA for review and approval. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that the alternative opacity limit shall not be greater than 40%.
  3. If the petition is denied, the source shall either comply with the 20% opacity limit or apply for a significant permit revision to incorporate a compliance schedule under R18-2-309(5)(c)(iii) by April 23, 2006.
  4. A source does not have to petition for an alternative opacity limit under subsection (D) to enter into a revised compliance schedule under R18-2-309(5)(c).
- F. The Director, Administrator, source owner or operator, inspector or other interested party shall determine the process weight rate, as used in this Article, as follows:
1. For continuous or long run, steady-state process sources, the process weight rate is the total process weight for the entire period of continuous operation, or for a typical portion of that period, divided by the number of hours of the period, or portion of hours of that period.
  2. For cyclical or batch process sources, the process weight rate is the total process weight for a period which covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during the period.

**Historical Note**

Former Section R18-2-702 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-702 renumbered from R18-2-502 and amended effective November 15, 1993 (Supp. 93-4). Amended by exempt rulemaking at 9 A.A.R. 5550, effective February 3, 2004 (Supp. 03-4).

**R18-2-703. Standards of Performance for Existing Fossil-fuel Fired Steam Generators and General Fuel-burning Equipment****A.** This Section applies to the following:

1. Installations in which fuel is burned for the primary purpose of producing power, steam, hot water, hot air or other liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the

same purpose or in conjunction with any fuel, the same maximum emission limitation shall apply, except for wood waste burners as regulated under R18-2-704.

2. All fossil-fuel fired steam generating units or general fuel burning equipment which are greater than or equal to 73 megawatts capacity.
- B.** For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. The heat content of solid fuel shall be determined in accordance with R18-2-311. Compliance tests shall be conducted during operation at the nominal rated capacity of each unit.
- C.** No person shall cause, allow or permit the emission of particulate matter in excess of the amounts calculated by one of the following equations:
1. For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 1.02Q^{0.769}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 Q = the heat input in million Btu per hour.
  2. For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:  

$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meaning as in subsection (C)(1).
- D.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E.** When low sulfur oil is fired:
1. Existing fuel-burning equipment or steam-power generating installations which commenced construction or a major modification prior to May 30, 1972, shall not emit more than 1.0 pounds sulfur dioxide maximum three-hour average, per million Btu (430 nanograms per joule) heat input.
  2. Existing fuel-burning equipment or steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit more than 0.80 pounds of sulfur dioxide maximum three-hour average per million Btu (340 nanograms per joule) heat input.
- F.** When high sulfur oil is fired, all existing steam-power generating and general fuel-burning installations which are subject to the provisions of this Section shall not emit more than 2.2 pounds of sulfur dioxide maximum three-hour average per million Btu (946 nanograms per joule) heat input.
- G.** When solid fuel is fired:
1. Existing general fuel-burning equipment and steam-power generating installations which commenced construction or a major modification prior to May 30, 1972, shall not emit more than 1.0 pounds of sulfur dioxide maximum three-hour average, per million Btu (430 nanograms per joule) heat input.
  2. Existing general fuel-burning equipment and steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit more than 0.80 pounds of sulfur dioxide, maximum three-hour average, per million Btu (340 nanograms per joule) heat input.
- H.** Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee, unless the applicant demonstrates to the satisfaction of the

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Director that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.

1. The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
  2. In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
  3. When the conditions justifying the use of high sulfur oil no longer exists, the permit shall be modified accordingly.
  4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- I.** Existing steam-power generating installations which commenced construction or a major modification after May 30, 1972, shall not emit nitrogen oxides in excess of the following amounts:
1. 0.20 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when gaseous fossil fuel is fired.
  2. 0.30 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when liquid fossil fuel is fired.
  3. 0.70 pounds of nitrogen oxides, maximum three-hour average, calculated as nitrogen dioxide, per million Btu heat input when solid fossil fuel is fired.
- J.** Emission and fuel monitoring systems, where deemed necessary by the Director for sources subject to the provisions of this Section shall, conform to the requirements of R18-2-313.
- K.** The applicable reference methods given in the Appendices to 40 CFR 60 shall be used to determine compliance with the standards as prescribed in subsections (C) through (G) and (I). All tests shall be run at the heat input calculated under subsection (B).

**Historical Note**

Former Section R18-2-703 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-703 renumbered from R18-2-503 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-704. Standards of Performance for Incinerators**

- A.** No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator, smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity except during the times specified in subsection (D).
- B.** No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any incinerator, in excess of the following limits:
1. For multiple chamber incinerators, controlled atmosphere incinerators, fume incinerators, afterburners or other unspecified types of incinerators, emissions shall not exceed 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
  2. For wood waste burners other than air curtain destructors, emissions discharged from the stack or burner top opening shall not exceed 0.2 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.

- C.** Air curtain destructors shall not be used within 500 feet of the nearest dwelling.
- D.** Incinerators shall be exempt from the opacity and emission requirements described in subsections (A) and (B) as follows:
1. For multiple chamber incinerators, controlled atmosphere incinerators, fume incinerators, afterburners or other unspecified types of incinerators, such exemption shall be for not more than 30 seconds in any 60-minute period.
  2. Wood waste burners shall be exempt both:
    - a. For a period once each day for the purpose of building a new fire but not to exceed 60 minutes, and
    - b. For an upset of operations not to exceed three minutes in any 60-minute period.
- E.** The owner or operator of any incinerator subject to the provisions of this Section shall record the daily charging rates and hours of operation.
- F.** The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A, shall be used to determine compliance with the standards prescribed in subsection (B) as follows:
    - a. Method 5 for the concentration of particulate matter and the associated moisture content;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis and calculation of excess air, using the integrated sampling technique.
  2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 0.85 dscm (30.0 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Director.

**Historical Note**

Former Section R18-2-704 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-704 renumbered from R18-2-504 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

**R18-2-705. Standards of Performance for Existing Portland Cement Plants**

- A.** The provisions of this Section are applicable to the following affected facilities in portland cement plants: kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems.
- B.** No person shall cause, allow or permit the discharge of particulate matter from any identifiable process source within any existing cement plant subject to the provisions of this Section which exceeds the amounts calculated by one of the following equations:
1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the max-

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imum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$

where "E" and "P" are defined as indicated in subsection (B)(1).

- C. No process source within any portland cement plant shall exceed 20% opacity.
- D. No person shall cause, allow or permit discharge into the atmosphere of an amount in excess of 6 pounds of sulfur oxides, calculated as sulfur dioxide, per ton cement kiln feed from cement plants subject to the provisions of this Section.
- E. The owner or operator of any portland cement plant subject to the provisions of this Section shall record the daily production rates and the kiln feed rates.
- F. The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A, except as provided for in R18-2-312 shall be used to determine compliance with the standards prescribed in subsection (B) as follows:
    - a. Method 5 for the concentration of particulate matter and the associated moisture content;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis.
  2. For Method 5, the minimum sampling time and minimum sample volume for each run except when process variables or other factors justifying otherwise to the satisfaction of the Director, shall be as follows:
    - a. 60 minutes and 0.85 dscm (30.0 dscf) for the kiln,
    - b. 60 minutes and 1.15 dscm (40.6 dscf) for the clinker cooler.
  3. Total kiln feed rate, except fuels, expressed in metric tons per hour on a dry basis, shall be both:
    - a. Determined during each testing period by suitable methods; and
    - b. Confirmed by a material balance over the production system.
  4. For each run, particulate matter emissions, expressed in g/metric ton of kiln feed, shall be determined by dividing the emission rate in g/hr by the kiln feed rate. The emission rate shall be determined by the equation,  $g/hr = Q_s \times c$ , where  $Q_s$  = volumetric flow rate of the total effluent in dscm/hr as determined in accordance with subsection (F)(1)(c), and  $c$  = particulate concentration in g/dscm as determined in accordance with subsection (F)(1)(a).

**Historical Note**

Former Section R18-2-705 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-705 renumbered from R18-2-505 effective November 15, 1993 (Supp. 93-4).

**R18-2-706. Standards of Performance for Existing Nitric Acid Plants**

- A. No person shall cause, allow or permit discharge from any nitric acid plant producing weak nitric acid, which is either:
1. 30 to 70% in strength by either the increased pressure or atmospheric pressure process, or
  2. More than 1.5 kg of total oxides of nitrogen per metric ton (3.0 lbs/ton) of acid produced expressed as nitrogen dioxide.
- B. The opacity of any plume subject to the provisions of this Section shall not exceed 10%.
- C. A continuous monitoring system for the measurement of nitrogen oxides shall be installed, calibrated, maintained and oper-

ated by the owner or operator, in accordance with Section R18-2-313.

- D. The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with the standard prescribed in subsection (A) as follows:
    - a. Method 7 for the concentration of  $NO_x$ ;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis.
  2. For Method 7, the sample site shall be selected according to Method 1 and the sampling point shall be the centroid of the stack or duct or at a point no closer to the walls than 1 m (3.28 ft.). Each run shall consist of at least four grab samples taken at approximately 15-minute intervals. The arithmetic mean of the samples shall constitute the run value. A velocity traverse shall be performed once per run.
  3. Acid production rate, expressed in metric tons per hour of 100% nitric acid, shall be both:
    - a. Determined during each testing period by suitable methods, and
    - b. Confirmed by a material balance over the production system.
  4. For each run, nitrogen oxides, expressed in g/metric ton of 100% nitric acid, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation:
 
$$g/hr = Q_s \times c$$
 where  $Q_s$  = volumetric flow rate of the effluent in dscm/hr, as determined in accordance with subsection (D)(1)(c), and  $c$  =  $NO_x$  concentration in g/dscm, as determined in accordance with subsection (D)(1)(a).

**Historical Note**

Former Section R18-2-706 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-706 renumbered from R18-2-506 effective November 15, 1993 (Supp. 93-4).

**R18-2-707. Standards of Performance for Existing Sulfuric Acid Plants**

- A. Facilities that produce sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfide and mercaptans or acid sludge shall not discharge into the atmosphere:
1. Greater than 2 kg of sulfur dioxide per metric ton (4 lbs/ton) of sulfuric acid produced (calculated as 100%  $H_2SO_4$ ), or
  2. Greater than 0.075 kg of sulfuric acid mist per metric ton (0.15 lbs/ton) or sulfuric acid produced (calculated as 100%  $H_2SO_4$ ).
- B. This Section shall not apply to metallurgical plants or other facilities where conversion to sulfuric acid is utilized as a means of controlling emissions to the atmosphere of sulfur dioxide or other sulfur compounds.
- C. A continuous monitoring system for the measurement of sulfur dioxide shall be installed, calibrated, maintained and operated by the owner or operator, in accordance with R18-2-313.
- D. The test methods and procedures required by this Section are as follows:
1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with standards prescribed in subsection (A) as follows:
    - a. Method 8 for concentration of  $SO_2$  and acid mist;

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- b. Method 1 for sample and velocity traverses;
  - c. Method 2 for velocity and volumetric flow rate;
  - d. Method 3 for gas analysis.
2. The moisture content can be considered to be zero. For Method 8 the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 1.15 dscm (40.6 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Director.
  3. Acid production rate, expressed in metric tons per hour of 100% H<sub>2</sub>SO<sub>4</sub>, shall be both:
    - a. Determined during each testing period by suitable methods, and
    - b. Confirmed by a material balance over the production system.
  4. Acid mist and sulfur dioxide emissions, expressed in g/metric ton of 100% H<sub>2</sub>SO<sub>4</sub>, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation, g/hr-Q<sub>s</sub> x c, where Q<sub>s</sub> = volumetric flow rate of the effluent in dscm/hr as determined in accordance with subsection (D)(1)(c), and c = acid mist and SO<sub>2</sub> concentrations in g/dscm as determined in accordance with subsection (D)(1)(a).

**Historical Note**

Former Section R18-2-707 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-707 renumbered from R18-2-507 effective November 15, 1993 (Supp. 93-4).

**R18-2-708. Standards of Performance for Existing Asphalt Concrete Plants**

- A. Fixed asphalt concrete plants and portable asphalt concrete plants shall meet the standards set forth in this Section.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing asphalt concrete plant in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:
    - E = the maximum allowable particulate emission rate in pounds-mass per hour.
    - P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:
 
$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Liquid fuel containing greater than 0.9% sulfur by weight shall not be utilized for asphalt concrete plants subject to this Section.
- F. Solid fuel containing greater than 0.5% sulfur by weight shall not be utilized for asphalt concrete plants subject to this Section.

- G. The test methods and procedures required under this Section are:

1. The referenced methods given in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in subsection (B).
  - a. Method 5 for the concentration of particulate matter and the associated moisture content,
  - b. Method 1 for sample and velocity traverses,
  - c. Method 2 for velocity and volumetric flow rate,
  - d. Method 3 for gas analysis.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.
3. Percent sulfur in liquid fuel shall be determined by ASTM method D-129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method), and the percent sulfur in solid fuel shall be determined by ASTM method D-3177-89 (Test Method for Total Sulfur in the Analysis Sample of Coal and Coke).

**Historical Note**

Former Section R18-2-708 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-708 renumbered from R18-2-508 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-709. Expired****Historical Note**

Former Section R18-2-709 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-709 renumbered from R18-2-509 and amended effective November 15, 1993 (Supp. 93-4). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

**R18-2-710. Standards of Performance for Existing Storage Vessels for Petroleum Liquids**

- A. No person shall place, store or hold in any reservoir, stationary tank or other container having a capacity of 40,000 (151,400 liters) or more gallons any petroleum liquid having a vapor pressure of 1.5 pounds per square inch absolute or greater under actual storage conditions, unless such tank, reservoir or other container is a pressure tank maintaining working pressure sufficient at all times to prevent hydrocarbon vapor or gas loss to the atmosphere, or is equipped with one of the following vapor loss control devices, properly installed, in good working order and in operation:
  1. A floating roof consisting of a pontoon type double-deck type roof resting on the surface of the liquid contents and equipped with a closure seal to close the space between the roof eave and tank wall and a vapor balloon or vapor dome, designed in accordance with accepted standards of the petroleum industry. The control equipment shall not be used if the petroleum liquid has a vapor pressure of 12 pounds per square inch absolute or greater under actual storage conditions.
    - a. All tank gauging and sampling devices shall be gas-tight except when gauging or sampling is taking place.
    - b. There shall be no visible holes, tears, or other openings in the seal or any seal fabric. Where applicable, all openings except drains shall be equipped with a cover, seal, or lid. The cover, seal, or lid shall be in a

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closed position at all times, except when the device is in actual use.

- c. Automatic bleeder vents shall be closed at all times, except when the roof is floated off or landed on the roof leg supports.
  - d. Rim vents, if provided, shall be set to open when the roof is being floated off the roof leg supports, or at the manufacturer's recommended setting.
2. Other equipment proven to be of equal efficiency for preventing discharge of hydrocarbon gases and vapors to the atmosphere.
- B.** Any other petroleum liquid storage tank shall be equipped with a submerged filling device, or acceptable equivalent, for the control of hydrocarbon emissions.
- C.** All facilities for dock loading of petroleum products, having a vapor pressure of 1.5 pounds per square inch absolute or greater at loading pressure, shall provide for submerged filling or acceptable equivalent for control of hydrocarbon emissions.
- D.** All pumps and compressors which handle volatile organic compounds shall be equipped with mechanical seals or other equipment of equal efficiency to prevent the release of organic contaminants into the atmosphere.
- E.** The monitoring of operations required by this Section is as follows:
1. The owner or operator of any petroleum liquid storage vessel to which this Section applies shall for each such storage vessel maintain a file of each type of petroleum liquid stored, of the typical Reid vapor pressure of each type of petroleum liquid stored and of dates of storage. Dates on which the storage vessel is empty shall be shown.
  2. The owner or operator of any petroleum liquid storage vessel to which this Section applies shall for such storage vessel determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if either:
    - a. The petroleum liquid has a true vapor pressure, as stored, greater than 26 mm Hg (0.5 psia) but less than 78 mm Hg (1.5 psia) and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or
    - b. The petroleum liquid has a true vapor pressure, as stored, greater than 470 mm Hg (9.1 psia) and is stored in a storage vessel other than one equipped with a vapor recovery system or its equivalent.
  3. The average monthly storage temperature shall be an arithmetic average calculated for each calendar month, or portion thereof, if storage is for less than a month, from bulk liquid storage temperatures determined at least once every seven days.
  4. The true vapor pressure shall be determined by the procedures in American Petroleum Institute Bulletin 2517, amended as of February 1980 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the Director requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, the Reid vapor pressure may be used. For other liquids, supporting analytical data must be

made available upon request to the Director when typical Reid vapor pressure is used.

**Historical Note**

Section R18-2-710 renumbered from R18-2-510 effective November 15, 1993 (Supp. 93-4).

**R18-2-711. Expired****Historical Note**

Section R18-2-711 renumbered from R18-2-511 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

**R18-2-712. Expired****Historical Note**

Section R18-2-712 renumbered from R18-2-512 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

**R18-2-713. Expired****Historical Note**

Section R18-2-713 renumbered from R18-2-513 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

**R18-2-714. Standards of Performance for Existing Sewage Treatment Plants**

- A.** No person shall cause, allow or permit to be emitted into the atmosphere, from any municipal sewage treatment plant sludge incinerator:
1. Smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 20% opacity for more than 30 seconds in any 60-minute period.
  2. Particulate matter in concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- B.** The owner or operator of any sludge incinerator subject to the provisions of this Section shall monitor operations by doing all of the following:
1. Install, calibrate, maintain and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall have an accuracy of  $\pm 5\%$  over its operating range.
  2. Provide access to the sludge charged so that a well-mixed representative grab sample of the sludge can be obtained.
  3. Install, calibrate, maintain and operate a weighing device for determining the mass of any municipal solid waste charged to the incinerator when sewage sludge and municipal solid wastes are incinerated together. The weighing device shall have an accuracy of  $\pm 5\%$  over its operating range.
- C.** The test methods and procedures required by this Section are as follows:
1. The reference methods set forth in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in subsection (A) as follows:

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- a. Method 5 for concentration of particulate matter and associated moisture content;
  - b. Method 1 for sample and velocity traverses;
  - c. Method 2 for volumetric flow rate; and
  - d. Method 3 for gas analysis.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.

**Historical Note**

Section R18-2-714 renumbered from R18-2-514 effective November 15, 1993 (Supp. 93-4).

**R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements**

- A.** No owner or operator of a primary copper smelter shall cause, allow or permit the discharge of particulate matter into the atmosphere from any process in total quantities in excess of the amount calculated by one of the following equations:
- 1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  - 2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (A)(1).
- B.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- C.** For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter for that process.
- D.** The opacity of emissions subject to the provisions of this Section shall not exceed 20%.
- E.** The reference methods set forth in the Arizona Testing Manual and 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:
- 1. Method A1 or Reference Method 5 for concentration of particulate matter and associated moisture content,
  - 2. Reference Method 1 for sample and velocity traverses,
  - 3. Reference Method 2 for volumetric flow rate,
  - 4. Reference Method 3 for gas analysis.
- F.** Except as provided in a consent decree or a delayed compliance order, the owner or operator of any primary copper smelter shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from any stack required to be monitored by R18-2-715.01(K) in excess of the following:
- 1. For the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17" W:
    - a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 6,882 pounds per hour.
    - b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission

level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	24,641
1	22,971
2	21,705
4	20,322
7	19,387
12	18,739
20	17,656
32	16,988
48	16,358
68	15,808
94	15,090
130	14,423
180	13,777
245	13,212
330	12,664
435	12,129
560	11,621
710	11,165
890	10,660
1100	10,205
1340	9,748
1610	9,319
1910	8,953
2240	8,556

- 2. For the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W:
  - a. Annual average emissions, as calculated under R18-2-715.01(C), shall not exceed 604 pounds per hour.
  - b. The number of three-hour average emissions, as calculated under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	8678
1	7158
2	5903
4	4575
7	4074
12	3479
20	3017
32	2573
48	2111
68	1703
94	1461
130	1274
180	1145
245	1064

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330	1015
435	968
560	933
710	896
890	862
1100	828
1340	797
1610	765
1910	739
2240	712

- G.** Except as provided in a consent decree or a delayed compliance order, for the copper smelter located near Hayden, Arizona at latitude 33°0'29"N and longitude 110°47'17"W, annual average fugitive emissions calculated under R18-2-715.01(T) shall not exceed 295 pounds per hour.
- H.** In addition to the limits in subsection (F)(3), except as provided in a consent decree or a delayed compliance order, the owner or operator of the copper smelter located near Miami, Arizona at latitude 33°24'50"N and longitude 110°51'25"W shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from combined stack and fugitive emissions units in excess of the 2420 pounds per hour annual average calculated under R18-2-715.01(U).
- I.** The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715(F)(1) and R18-2-715(G) until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715(F)(2) and R18-2-715(H) until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

**Historical Note**

Section R18-2-715 renumbered from R18-2-515 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 23 A.A.R. 767, effective May 7, 2017, (Supp. 17-1).

**R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring**

- A.** The cumulative occurrence and emission limits in R18-2-715(F) apply to the total of sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not uncaptured fugitive emissions or emissions due solely to the use of fuel for space heating or steam generation.
- B.** The owner or operator shall include periods of malfunction, startup, shutdown or other upset conditions when determining compliance with the cumulative occurrence or annual average emission limits in R18-2-715(F), (G), or (H).
- C.** The owner or operator shall determine compliance with the cumulative occurrence and emission limits contained in R18-2-715(F) as follows:
1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period defined in subsection (J) ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(F) if either:
    - a. The annual average is greater than the annual average computed for the preceding day; or
    - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
  2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements in subsection (K).
- D.** For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986, except that:
1. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(1) and R18-2-715(G) is January 15, 2002, and
  2. The compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(2), (F)(3), (G), and (H) is the effective date of this rule.
- E.** For purposes of subsection (C), a three-hour emissions average in excess of an emission level E violates the associated cumulative occurrence limit n listed in R18-2-715(F) if:
1. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
  2. The average is calculated during the last operating day of the compliance period being reported.
- F.** A three-hour emissions average only violates the cumulative occurrence limit n of an emission level E on the day containing the last hour in the average.
- G.** Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(F).
- H.** The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(F).
- I.** Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(F).
- J.** To determine compliance with subsections (C) through (I), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- K.** To determine compliance with R18-2-715(F) or (H), the owner or operator of any smelter subject to R18-2-715(F) or (H) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in each stack that could emit five percent or more of the allowable annual average sulfur dioxide emissions from the smelter.
1. The owner or operator shall continuously monitor sulfur dioxide concentrations and stack gas volumetric flow rates in the outlet of each piece of sulfur dioxide control equipment.
  2. The owner or operator shall continuously monitor captured fugitive emissions for sulfur dioxide concentrations

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and stack gas volumetric flow rates and include these emissions as part of total plant emissions when determining compliance with the cumulative occurrence and emission limits in R18-2-715(F) and (H).

3. If the owner or operator demonstrates to the Director that measurement of stack gas volumetric flow in the outlet of any particular piece of sulfur dioxide control equipment would yield inaccurate results once operational or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
4. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all monitored stacks, outlets, or other approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
5. The owner or operator shall demonstrate that the continuous monitoring system meets all of the following requirements:
  - a. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the requirements of 40 CFR 60, Appendix B, Performance Specification 6.
  - b. The sulfur dioxide continuous emission monitoring system installed and operated under this Section meets the quality assurance requirements of 40 CFR 60, Appendix F.
  - c. The owner or operator shall notify the Director in writing at least 30 days in advance of the start of relative accuracy test audit (RATA) procedures performed on the continuous monitoring system.
  - d. The Director shall approve the location of all sampling points for monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in writing before installation and operation of measurement instruments.
  - e. The measurement system installed and used under this subsection is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case specifications or recommendations shall be followed. The owner or operator shall make available a record of these procedures that clearly shows instrument readings before and after zero adjustment and calibration.
- L. The owner or operator of a smelter subject to this Section shall measure at least 95 percent of the hours during which emissions occurred in any month.
- M. Failure of the owner or operator of a smelter subject to this Section to measure any 12 consecutive hours of emissions according to the requirements of subsection (K) or (S) is a violation of this Section.
- N. The owner or operator of any smelter subject to this Section shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring equipment required by this Section to allow for the replacement within six hours of any monitoring equipment part that fails or malfunctions during operation.
- O. To determine total overall emissions, the owner or operator of any smelter subject to this Section shall perform material balances for sulfur according to the procedures prescribed by Appendix 8 of this Chapter.
- P. The owner or operator of any smelter subject to this Section shall maintain a record of all average hourly emissions measurements and all calculated average monthly emissions required by this Section. The record of the emissions shall be retained for at least five years following the date of measurement or calculation. The owner or operator shall record the measurement or calculation results as pounds per hour of sulfur dioxide. The owner or operator shall summarize the following data monthly and submit the summary to the Director within 20 days after the end of each month:
  1. For all periods described in subsection (C) and (R), the annual average emissions as calculated at the end of each day of the month;
  2. The total number of hourly periods during the month in which measurements were not taken and the reason for loss of measurement for each period;
  3. The number of three-hour emissions averages that exceeded each of the applicable emissions levels listed in R18-2-715(F) and (G) for the compliance periods ending on each day of the month being reported;
  4. The date on which a cumulative occurrence limit listed in R18-2-715(F) or (G) was exceeded if the exceedance occurred during the month being reported; and
  5. For all periods described in subsection (T) and (U), the annual average emissions as calculated at the end of the last day of each month.
- Q. An owner or operator shall install instrumentation to monitor each point in the smelter facility where a means exists to bypass the sulfur removal equipment, to detect and record all periods that the bypass is in operation. An owner or operator of a copper smelter shall report to the Director, not later than the 15th day of each month, the recorded information required by this Section, including an explanation for the necessity of the use of the bypass.
- R. The owner or operator shall determine compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G) as follows:
  1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (R)(8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(G) if either:
    - a. The annual average is greater than the annual average computed for the preceding day; or
    - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
  2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements contained in subsection (S).
  3. For purposes of subsection (R)(2), a three-hour emissions average in excess of an emission level  $E_f$  violates the associated cumulative occurrence limit listed in R18-2-715(G) if:
    - a. The number of all three-hour emissions averages calculated during the compliance period in excess of

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- that emission level exceeds the cumulative occurrence limit associated with the emission level; and
- b. The average is calculated during the last operating day of the compliance period being reported.
4. A three-hour emissions average only violates the cumulative occurrence limit  $n$  of an emission level  $E_f$  on the day containing the last hour in the average.
  5. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(G).
  6. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(G).
  7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(G).
  8. To determine compliance with subsections (R)(1) through (7), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- S. To determine compliance with R18-2-715(G), the owner or operator of the smelter subject to R18-2-715(G) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
1. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration from an approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
  2. The owner or operator of a smelter subject to the requirements of this subsection shall conduct quality assurance procedures on the continuous monitoring system according to the methods in 40 CFR 60, Appendix F, except that an annual relative accuracy test audit (RATA) is not required.
- T. The emission limit in R18-2-715(G) applies to the total of uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(G) as follows:
1. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
  2. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(G) if the fugitive annual average computed at the end of each month exceeds the allowable annual average emission limit.
- U. The emission limit in R18-2-715(H) applies to the total of stack and uncaptured fugitive sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not emissions due solely to the use of fuel for space heating or steam generation. The owner or operator shall determine compliance with the emission limit contained in R18-2-715(H) as follows:
1. The owner or operator shall calculate annual average stack emissions at the end of the last day of each month by averaging the emissions for all hours measured during the previous 12-month period ending on that day according to the requirements contained in subsection (K).
  2. The owner or operator shall calculate annual average fugitive emissions at the end of the last day of each month by averaging the monthly emissions for the previous 12-month period ending on that day. To determine monthly fugitive emissions, the owner or operator shall perform material balances for sulfur according to the sulfur balance procedures prescribed in Appendix 8 of this Chapter.
  3. An annual emissions average in excess of the allowable annual average emission limit violates R18-2-715(H) if the total of the stack and fugitive annual averages computed at the end of each month exceeds the allowable annual average emission limit.
- V. The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715.01 until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715.01 until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

**Historical Note**

Section R18-2-715.01 renumbered from R18-2-515.01 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 8 A.A.R. 575, effective January 15, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 3365, effective July 18, 2002 (Supp. 02-3). Amended by final rulemaking at 23 A.A.R. 767, effective May 7, 2017, (Supp. 17-1).

**R18-2-715.02. Standards of Performance for Existing Primary Copper Smelters; Fugitive Emissions**

- A. For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986.
- B. No later than 24 months before the compliance date, the owner or operator of a smelter subject to R18-2-715 shall submit to the Director the results of an evaluation of the fugitive emissions from the smelter. The evaluation results shall contain all of the following information:
1. A measurement or accurate estimate of total fugitive emissions from the smelter during typical operations, including planned start-up and shutdown. The measurement or estimate shall contain the amount of both average short-term (24 hours) and average long-term (monthly) fugitive emissions from the smelter. The evaluation plan shall be approved in advance by the Department and shall specify the method used to determine the fugitive emis-

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- sion amounts, including the conditions determined to be "typical operations" for the smelter.
2. A measurement or accurate estimate of the relative proportion, expressed as a percentage, of total fugitive emissions during typical operations, including planned start-up and shutdown, produced by any of the following smelter processes:
    - a. Roaster or dryer operation;
    - b. Calcine or dried concentrate transfer;
    - c. Reverberatory furnace operations, including feeding, slag return, matte and slag tapping;
    - d. Matte transfer; and
    - e. Converter operations.
  3. The measurement technique or method of estimation used to fulfill the requirement in subsection (B)(2) shall be approved in advance by the Department.
  4. The results of at least a six-month fugitive emission impact analysis conducted during that part of the year when fugitive emissions are expected to have the greatest ambient air quality impact. The study shall utilize sufficient measurements of fugitive emissions, meteorological conditions and ambient sulfur dioxide concentrations to associate fugitive emissions with specific measured ambient concentrations of sulfur dioxide. The study shall describe in detail the techniques used to make the required determinations. The design of the study shall be approved in advance by the Department.
- C. On the basis of the results of the evaluation as well as other data and information contained in the records of the Department, the Director shall determine whether fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of the ambient sulfur dioxide standards in the vicinity of the smelter. If the Director finds that fugitive emissions from a particular smelter have the potential to cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of a smelter, then the Director shall adopt rules specifying the emission limits and undertake other appropriate measures necessary to maintain ambient sulfur dioxide standards.
- D. The requirements of subsection (B) shall not apply to a smelter subject to this Section if the owner or operator of that smelter can demonstrate to the Director both that:
1. Compliance with the applicable cumulative occurrence and emission limits listed in R18-2-715(F) will require the smelter to undergo major modifications to its physical configuration or work practices prior to the compliance date, and
  2. That the modification will reduce fugitive emissions to such an extent that such emissions will not cause or significantly contribute to violations of ambient sulfur dioxide standards in the vicinity of the smelter.
- E. In order to assess the sufficiency of the cumulative occurrence and emission limits contained in R18-2-715(F) to maintain the ambient air quality standards for sulfur dioxide set forth in R18-2-202, an owner or operator of a smelter subject to this Section shall continue to calibrate, maintain and operate any ambient sulfur dioxide monitoring equipment owned by the smelter owner or operator and in operation within the area of the smelter enclosed by a circle with 10-mile radius as calculated from a center point which shall be the point of the smelter's greatest sulfur dioxide emissions, for a period of at least three years after the compliance date.
1. Such monitors shall be operated and maintained in accordance with 40 CFR 50 and 58 and such other conditions as the Director deems necessary.
  2. The location of ambient sulfur dioxide monitors and length of time such monitors remain at a location shall be determined by the Director.
- F. The owner and operator of the copper smelter located near Hayden, Arizona at the latitude and longitude provided in R18-2-715(F)(1) shall comply with Section R18-2-715.02 until the effective date of R18-2-B1302 as determined by R18-2-B1302(A)(2). The owner and operator of the copper smelter located near Miami, Arizona at the latitude and longitude provided in R18-2-715(F)(2) shall comply with Section R18-2-715.02 until the effective date of R18-2-C1302 as determined by R18-2-C1302(A)(2).

**Historical Note**

Section R18-2-715.02 renumbered from R18-2-515.02 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 23 A.A.R. 767, effective May 7, 2017, (Supp. 17-1).

**R18-2-716. Standards of Performance for Existing Coal Preparation Plants**

- A. The provisions of this Section are applicable to any of the following affected facilities in coal preparation plants: thermal dryers, pneumatic coal-cleaning equipment, coal processing and conveying equipment including breakers and crushers, coal storage systems, and coal transfer and loading systems. For purposes of this Section, the definitions contained in 40 CFR 60.251 are adopted by reference and incorporated herein.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any existing coal preparation plant in total quantities in excess of the amounts calculated by one of the following equations:
1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:
 
$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Fugitive emissions from coal preparation plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The test methods and procedures required by this Section are as follows:
1. The reference methods in the 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, are used to determine compliance with standards prescribed in subsection (B) as follows:
    - a. Method 5 for the concentration of particulate matter and associated moisture content,
    - b. Method 1 for sample and velocity traverses,
    - c. Method 2 for velocity and volumetric flow rate,
    - d. Method 3 for gas analysis.

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2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf) except that short sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.
3. The owner or operator shall construct the facility so that particulate emissions from thermal dryers or pneumatic coal cleaning equipment can be accurately determined by applicable test methods and procedures under subsection (F)(1).

**Historical Note**

Section R18-2-716 renumbered from R18-2-516 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-717. Expired****Historical Note**

Section R18-2-717 renumbered from R18-2-517 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

**R18-2-718. Repealed****Historical Note**

Section R18-2-718 renumbered from R18-2-518 effective November 15, 1993 (Supp. 93-4). Section repealed by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

**R18-2-719. Standards of Performance for Existing Stationary Rotating Machinery**

- A. The provisions of this Section are applicable to the following affected facilities: all stationary gas turbines, oil-fired turbines, or internal combustion engines. This Section also applies to an installation operated for the purpose of producing electric or mechanical power with a resulting discharge of sulfur dioxide in the installation's effluent gases.
- B. For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. Compliance tests shall be conducted during operation at the normal rated capacity of each unit. The total heat input of all operating fuel-burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.
- C. No person shall cause, allow or permit the emission of particulate matter, caused by combustion of fuel, from any stationary rotating machinery in excess of the amounts calculated by one of the following equations:
  1. For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 1.02Q^{0.769}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 Q = the heat input in million Btu per hour.
  2. For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meaning as in subsection (C)(1).
- D. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E. No person shall cause, allow or permit to be emitted into the atmosphere from any stationary rotating machinery, smoke for any period greater than 10 consecutive seconds which exceeds 40% opacity. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- F. When low sulfur oil is fired, stationary rotating machinery installations shall burn fuel which limits the emission of sulfur dioxide to 1.0 pound per million Btu heat input.
- G. When high sulfur oil is fired, stationary rotating machinery installations shall not emit more than 2.2 pounds of sulfur dioxide per million Btu heat input.
- H. Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee. This condition may not be included in the permit if the applicant demonstrates to the satisfaction of the Director both that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.
  1. The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
  2. In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
  3. When the conditions justifying the use of high sulfur oil no longer exist, the permit shall be modified accordingly.
  4. Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- I. The owner or operator of any stationary rotating machinery subject to the provisions of this Section shall record daily the sulfur content and lower heating value of the fuel being fired in the machine.
- J. The owner or operator of any stationary rotating machinery subject to the provisions of this Section shall report to the Director any daily period during which the sulfur content of the fuel being fired in the machine exceeds 0.8%.
- K. The test methods and procedures required by this Section are as follows:
  1. To determine compliance with the standards prescribed in subsections (C) through (H), the following reference methods shall be used:
    - a. Reference Method 20 in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, for the concentration of sulfur dioxide and oxygen.
    - b. ASTM Method D129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method) for the sulfur content of liquid fuels.
    - c. ASTM Method D1072-90 (Test Method for Total Sulfur in Fuel Gases for the sulfur content of gaseous fuels).
  2. To determine compliance with the standards prescribed in subsection (J), the following reference methods shall be used:

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- a. ASTM Method D129-91 (Test Method for Sulfur in Petroleum Products) (General Bomb Method) for the sulfur content of liquid fuels.
- b. ASTM Method D1072-90 (Test Method for Total Sulfur in Fuel Gases) for the sulfur content of gaseous fuels.

**Historical Note**

Section R18-2-719 renumbered from R18-2-519 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 18 A.A.R. 1542, effective August 7, 2012 (Supp. 12-2).

**R18-2-720. Standards of Performance for Existing Lime Manufacturing Plants**

- A. The provisions of this Section are applicable to the following affected facilities used in the manufacture of lime: rotary lime kilns, vertical lime kilns, lime hydrators, and limestone crushing facilities. This Section is also applicable to limestone crushing equipment which exists apart from other lime manufacturing facilities.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any lime manufacturing or limestone crushing facility in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where:  
 $E$  = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 $P$  = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- E. Fugitive emissions from lime plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The owner or operator subject to the provisions of this Section shall install, calibrate, maintain, and operate a continuous monitoring system, except as provided in subsection (G), to monitor and record the opacity of the gases discharged into the atmosphere from any rotary lime kiln. The span of this system shall be set at 70% opacity.
- G. The owner or operator of any rotary lime kiln using a wet scrubbing emission control device subject to the provisions of this Section shall not be required to monitor the opacity of the gases discharged as required in subsection (F).
- H. The test methods and procedures required by this Section are as follows:
  1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter,

shall be used to determine compliance with this Section as follows:

- a. Method 5 for the measurement of particulate matter,
  - b. Method 1 for sample and velocity traverses,
  - c. Method 2 for velocity and volumetric flow rate,
  - d. Method 3 for gas analysis,
  - e. Method 4 for stack gas moisture,
  - f. Method 9 for visible emissions.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dscm/hr (0.53 dscf/min), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.
  3. Because of the high moisture content of the exhaust gases from the hydrators, in the range of 40 to 85% by volume, the Method 5 sample train may be modified to include a calibrated orifice immediately following the sample nozzle when testing lime hydrators. In this configuration, the sampling rate necessary for maintaining isokinetic conditions can be directly related to exhaust gas velocity without a correction for moisture content.

**Historical Note**

Section R18-2-720 renumbered from R18-2-520 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-721. Standards of Performance for Existing Nonferrous Metals Industry Sources**

- A. The provisions of this Section are applicable to the following affected facilities:
  1. Mines,
  2. Mills,
  3. Concentrators,
  4. Crushers,
  5. Screens,
  6. Material handling facilities,
  7. Fine ore storage,
  8. Dryers,
  9. Roasters, and
  10. Loaders.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere in any one hour from any process source subject to the provisions of this Section in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 4.10P^{0.67}$$
 where:  
 $E$  = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 $P$  = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:  

$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (B)(1).
- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in

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determining the maximum allowable emission of particulate matter.

- E. No person shall cause, allow or permit to be discharged into the atmosphere from any dryer or roaster the operating temperature of which exceeds 700°F, reduced sulfur in excess of 10% of the sulfur entering the process as feed. Reduced sulfur includes sulfur equivalent from all sulfur emissions including sulfur dioxide, sulfur trioxide, and sulfuric acid.
- F. The owner or operator of any mining property subject to the provisions of this Section shall record the daily process rates and hours of operation of all material handling facilities.
- G. A continuous monitoring system for measuring sulfur dioxide emissions shall be installed, calibrated, maintained and operated by the owner or operator where dryers or roasters are not expected to achieve compliance with the standard under subsection (E).
- H. The test methods and procedures required by this Section are as follows:
  1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standard prescribed in this Section as follows:
    - a. Method 5 for the concentration of particulate matter and the associated moisture content;
    - b. Method 1 for sample and velocity traverses;
    - c. Method 2 for velocity and volumetric flow rate;
    - d. Method 3 for gas analysis and calculation of excess air, using the integrated sample technique;
    - e. Method 6 for concentration of SO<sub>2</sub>.
  2. For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf), except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Director. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C. (320°F).
  3. For Method 6, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft.). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
  4. For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.

**Historical Note**

Section R18-2-721 renumbered from R18-2-521 effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-722. Standards of Performance for Existing Gravel or Crushed Stone Processing Plants**

- A. The provisions of this Section are applicable to the following affected facilities: primary rock crushers, secondary rock crushers, tertiary rock crushers, screens, conveyors and conveyor transfer points, stackers, reclaimers, and all gravel or crushed stone processing plants and rock storage piles.
- B. No person shall cause, allow or permit the discharge of particulate matter into the atmosphere except as fugitive emissions in any one hour from any gravel or crushed stone processing

plant in total quantities in excess of the amounts calculated by one of the following equations:

1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:

$$E = 4.10P^{0.67}$$

where:

E = the maximum allowable particulate emissions rate in pounds-mass per hour.

P = the process weight rate in tons-mass per hour.

2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:

$$E = 55.0P^{0.11-40}$$

where "E" and "P" are defined as indicated in subsection (B)(1).

- C. Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D. Spray bar pollution controls shall be utilized in accordance with "EPA Control of Air Emissions From Process Operations In The Rock Crushing Industry" (EPA 340/1-79-002), "Wet Suppression System" (pages 15-34, amended as of January 1979 (and no future amendments or editions)), as incorporated herein by reference and on file with the Office of the Secretary of State, with placement of spray bars and nozzles as required by the Director to minimize air pollution.
- E. Fugitive emissions from gravel or crushed stone processing plants shall be controlled in accordance with R18-2-604 through R18-2-607.
- F. The owner or operator of any affected facility subject to the provisions of this Section shall install, calibrate, maintain, and operate monitoring devices which can be used to determine daily the process weight of gravel or crushed stone produced. The weighing devices shall have an accuracy of ± 5% over their operating range.
- G. The owner or operator of any affected facility shall maintain a record of daily production rates of gravel or crushed stone produced.
- H. The test methods and procedures required by this Section are as follows:
  1. The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards prescribed in this Section as follows:
    - a. Method 5 for concentration of particulate matter and moisture content,
    - b. Method 1 for sample and velocity traverses,
    - c. Method 2 for velocity and volumetric flow rate,
    - d. Method 3 for gas analysis.
  2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume is 0.85 dscm (30 dscf), except that shorter sampling times or smaller volumes, when necessitated by process variables or other factors, may be approved by the Director. Sampling shall not be started until 30 minutes after start-up and shall be terminated before shutdown procedures commence. The owner or operator of the affected facility shall eliminate cyclonic flow during performance tests in a manner acceptable to the Director.

**Historical Note**

Section R18-2-722 renumbered from R18-2-522 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective

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March 7, 2009 (Supp. 09-1).

**R18-2-723. Standards of Performance for Existing Concrete Batch Plants**

Fugitive dust emitted from concrete batch plants shall be controlled in accordance with R18-2-604 through R18-2-607.

**Historical Note**

Section R18-2-723 renumbered from R18-2-523 and amended effective November 15, 1993 (Supp. 93-4).

**R18-2-724. Standards of Performance for Fossil-fuel Fired Industrial and Commercial Equipment**

- A.** This Section applies to industrial and commercial installations which are less than 73 megawatts capacity (250 million Btu per hour), but in the aggregate on any premises are rated at greater than 500,000 Btu per hour (0.146 megawatts), and in which fuel is burned for the primary purpose of producing steam, hot water, hot air or other liquids, gases or solids and in the course of doing so the products of combustion do not come into direct contact with process materials. When any products or by-products of a manufacturing process are burned for the same purpose or in conjunction with any fuel, the same maximum emission limitations shall apply.
- B.** For purposes of this Section, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or other outlet. The heat content of solid fuel shall be determined in accordance with R18-2-311. Compliance tests shall be conducted during operation at the nominal rated capacity of each unit. The total heat input of all fuel-burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.
- C.** No person shall cause, allow or permit the emission of particulate matter, caused by combustion of fuel, from any fuel-burning operation in excess of the amounts calculated by one of the following equations:
- For equipment having a heat input rate of 4200 million Btu per hour or less, the maximum allowable emissions shall be determined by the following equation:  

$$E = 1.02Q^{0.769}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 Q = the heat input in million Btu per hour.
  - For equipment having a heat input rate greater than 4200 million Btu per hour, the maximum allowable emissions shall be determined by the following equation:  

$$E = 17.0Q^{0.432}$$
 where "E" and "Q" have the same meanings as in subsection (C)(1).
- D.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- E.** Fossil-fuel fired industrial and commercial equipment installations shall not emit more than 1.0 pounds of sulfur dioxide per million Btu heat input when low sulfur oil is fired.
- F.** Fossil-fuel fired industrial and commercial equipment installations shall not emit more than 2.2 pounds of sulfur dioxide per million Btu heat input when high sulfur oil is fired.
- G.** Any permit issued for the operation of an existing source, or any renewal or modification of such a permit, shall include a condition prohibiting the use of high sulfur oil by the permittee. This condition may be omitted from the permit if the applicant demonstrates to the satisfaction of the Director both that sufficient quantities of low sulfur oil are not available for use by the source and that it has adequate facilities and contingency plans to ensure that the sulfur dioxide ambient air quality standards set forth in R18-2-202 will not be violated.

- The terms of the permit may authorize the use of high sulfur oil under such conditions as are justified.
  - In cases where the permittee is authorized to use high sulfur oil, it shall submit to the Department monthly reports detailing its efforts to obtain low sulfur oil.
  - When the conditions justifying the use of high sulfur oil no longer exist, the permit shall be modified accordingly.
  - Nothing in this Section shall be construed as allowing the use of a supplementary control system or other form of dispersion technology.
- H.** When coal is fired, fossil-fuel fired industrial and commercial equipment installations shall not emit more than 1.0 pounds of sulfur dioxide per million Btu heat input.
- I.** The owner or operator subject to the provisions of this Section shall install, calibrate, maintain and operate a continuous monitoring system for measurement of the opacity of emissions discharged into the atmosphere from the control device.
- J.** For the purpose of reports required under excess emissions reporting required by R18-2-310.01, the owner or operator shall report all six-minute periods in which the opacity of any plume or effluent exceeds 15%.
- K.** The test methods and procedures required by this Section are as follows:
- The reference methods in 40 CFR 60, Appendix A, as incorporated by reference in Appendix 2 of this Chapter, shall be used to determine compliance with the standards as prescribed in this Section.
    - Method 1 for selection of sampling site and sample traverses,
    - Method 3 for gas analysis to be used when applying Reference Methods 5 and 6,
    - Method 5 for concentration of particulate matter and the associated moisture content,
    - Method 6 for concentration of SO<sub>2</sub>.
  - For Method 5, Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 60 minutes and the minimum sampling volume shall be 0.85 dscm (30 dscf), except that smaller sampling times or volumes, when necessitated by process variables or other factors, may be approved by the Director. The probe and filter holder heating systems in the sampling train shall be set to provide a gas temperature no greater than 160°C. (320°F.).
  - For Method 6, the sampling site shall be the same as that selected for Method 5. The sampling point in the duct shall be at the centroid of the cross section or at a point no closer to the walls than 1 m (3.28 ft). For Method 6, the sample shall be extracted at a rate proportional to the gas velocity at the sampling point.
  - For Method 6, the minimum sampling time shall be 20 minutes and the minimum sampling volume 0.02 dscm (0.71 dscf) for each sample. The arithmetic mean of two samples shall constitute one run. Samples shall be taken at approximately 30-minute intervals.
  - Gross calorific value shall be determined in accordance with the applicable ASTM methods: D-2015-91 (Test for Gross Calorific Value of Solid Fuel by the Adiabatic Bomb Calorimeter) for solid fuels; D-240-87 (Test Method for Heat of Combustion of Liquid Hydrocarbon Fuels by Bomb Calorimeter) for liquid fuels; and D-1826-88 (Test Method for Calorific Value of Gases in Natural Gas Range by Continuous Recording Calorimeter) for gaseous fuels. The rate of fuels burned during each testing period shall be determined by suitable meth-

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ods and shall be confirmed by a material balance over the fossil-fuel fired system.

**Historical Note**

Section R18-2-724 renumbered from R18-2-524 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 7 A.A.R. 1164, effective February 15, 2001 (Supp. 01-1). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-725. Standards of Performance for Existing Dry Cleaning Plants**

- A.** No person shall conduct any dry cleaning operation using chlorinated synthetic solvents without minimizing organic solvent emissions by good modern practices including but not limited to the use of an adequately sized and properly maintained activated carbon absorber or other equally effective control device.
- B.** No person shall operate any dry cleaning establishment using petroleum solvents other than non-photochemically reactive solvents without reducing solvent emissions by at least 90%. For purposes of this subsection, a photochemically reactive solvent shall be any solvent with an aggregate of more than 20% of its total volume composed of the chemical compounds classified in subsections (B)(1) through (3), or which exceeds any of the following percentage composition limitations, referred to the total volume of solvent:
1. A combination of the following types of compounds having an olefinic or cyclo-olefinic type of unsaturation -- hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones: 5%.
  2. A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8%.
  3. A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichlorethylene or toluene: 20%.
- C.** Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution is discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to the adjoining property.

**Historical Note**

Section R18-2-725 renumbered from R18-2-525 effective November 15, 1993 (Supp. 93-4).

**R18-2-726. Standards of Performance for Sandblasting Operations**

No person shall cause or permit sandblasting or other abrasive blasting without minimizing dust emissions to the atmosphere through the use of good modern practices. Examples of good modern practices include wet blasting and the use of effective enclosures with necessary dust collecting equipment.

**Historical Note**

Section R18-2-726 renumbered from R18-2-526 effective November 15, 1993 (Supp. 93-4).

**R18-2-727. Standards of Performance for Spray Painting Operations**

- A.** No person shall conduct any spray paint operation without minimizing organic solvent emissions. Such operations other than architectural coating and spot painting, shall be conducted in an enclosed area equipped with controls containing no less than 96% of the overspray.
- B.** No person shall either:

1. Employ, apply, evaporate or dry any architectural coating containing photochemically reactive solvents for industrial or commercial purposes; or
  2. Thin or dilute any architectural coating with a photochemically reactive solvent.
- C.** For purposes of subsection (B), a photochemically reactive solvent shall be any solvent with an aggregate of more than 20% of its total volume composed of the chemical compounds classified in subsections (1) through (3), or which exceeds any of the following percentage composition limitations, referred to the total volume of solvent:
1. A combination of the following types of compounds having an olefinic or cyclo-olefinic type of unsaturation -- hydrocarbons, alcohols, aldehydes, esters, ethers, or ketones: 5%.
  2. A combination of aromatic compounds with 8 or more carbon atoms to the molecule except ethylbenzene: 8%.
  3. A combination of ethylbenzene, ketones having branched hydrocarbon structures, trichlorethylene or toluene: 20%.
- D.** Whenever any organic solvent or any constituent of an organic solvent may be classified from its chemical structure into more than one of the groups or organic compounds described in subsection (C)(1) through (3), it shall be considered to be a member of the group having the least allowable percent of the total volume of solvents.

**Historical Note**

Section R18-2-727 renumbered from R18-2-527 effective November 15, 1993 (Supp. 93-4).

**R18-2-728. Standards of Performance for Existing Ammonium Sulfide Manufacturing Plants**

- A.** The provisions of this Section are applicable to the following affected facilities in ammonium sulfide manufacturing plants: sulfide unloading facilities, reactor-absorbers, bubble cap scrubbers, and fume incinerators.
- B.** No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator or other outlet smoke, fumes, gases, particulate matter or other gas-borne material, the opacity of which exceeds 20%.
- C.** No person shall cause, allow or permit to be emitted into the atmosphere from any emission point from any incinerator, or to pass a convenient measuring point near such emission point, particulate matter of concentrations in excess of 0.1 grain per cubic foot, based on dry flue gas at standard conditions, corrected to 12% carbon dioxide.
- D.** No person shall allow hydrogen sulfide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.03 parts per million by volume for any averaging period of 30 minutes or more.
- E.** Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution are discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to adjoining property.
- F.** The owner or operator of any ammonium sulfide tailgas incinerator subject to the provisions of this Section shall do both of the following:
1. Install, calibrate, maintain, and operate a flow measuring device which can be used to determine either the mass or volume of tailgas charged to the incinerator. The flow

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measuring device shall have an accuracy of  $\pm 5\%$  over its operating range.

2. Provide access to the tailgas charged so that a well-mixed representative grab sample can be obtained.

**G.** The test methods and procedures required by this Section are as follows:

1. The reference methods in 40 CFR 60, Appendix A shall be used to determine compliance with the standards prescribed in this Section as follows:
  - a. Method 5 for the concentration of particulate matter and the associated moisture content;
  - b. Method 1 for sample and velocity traverse;
  - c. Method 2 for velocity and volumetric flow rate;
  - d. Method 3 for gas analysis and calculation of excess air, using the integrated sample technique;
  - e. Method 11 shall be used to determine the concentration of H<sub>2</sub>S and Method 6 shall be used to determine the concentration of SO<sub>2</sub>.
2. For Method 5, the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 0.85 dscm (30.0 dscf) except that shorter sampling times and smaller sample volumes, when necessitated by process variables or other factors, may be approved by the Director.
3. Particulate matter emissions, expressed in g/dscm, shall be corrected to 12% CO<sub>2</sub> by using the following formula:
 
$$C_{12} = \frac{12c}{\%CO_2}$$
 where:
 

$C_{12}$  = the concentration of particulate matter corrected to 12% CO<sub>2</sub>,

$c$  = the concentration of particulate matter as measured by Method 5, and

$\%CO_2$  = the percentage of CO<sub>2</sub> as measured by Method 3, or, when applicable, the adjusted outlet CO<sub>2</sub> percentage.
4. If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where fuel gas lines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals. For most fuel gases, sample times exceeding 20 minutes may result in depletion of the collecting solution, although fuel gases containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.
5. If Method 5 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining CO<sub>2</sub> concentration by Method 3 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining SO<sub>2</sub> concentration by Method 3 shall be at the centroid of the cross section if the cross sectional area is less than 5 m<sup>2</sup> (54 ft<sup>2</sup>) or at a point no closer to the walls than 1 m (3.28 feet) if the cross sectional area is 5 m<sup>2</sup> or more and the centroid is more than 1 meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the

sampling point. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.36 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately one-hour intervals.

**Historical Note**

Section R18-2-728 renumbered from R18-2-528 effective November 15, 1993 (Supp. 93-4).

**R18-2-729. Standards of Performance for Cotton Gins**

- A.** Fugitive dust, lint, bolls, cotton seed or other material emitted from a cotton gin or lying loose in a yard shall be collected and disposed of in an efficient manner or shall be treated in accordance with R18-2-604 through R18-2-607.
- B.** No person shall cause, allow or permit to be emitted into the atmosphere, from any type of incinerator, smoke, fumes, gases, particulate matter or other gas-borne material which exceeds 40% opacity.
- C.** No person shall cause, allow, or permit the discharge of particulate matter into the atmosphere in any one hour from any cotton gin in total quantities in excess of the amounts calculated by one of the following equations:
  1. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:
 

$E$  = the maximum allowable particulate emissions rate in pounds-mass per hour.

$P$  = the process weight rate in tons-mass per hour.
  2. For process sources having a process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:
 
$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (C)(1).
- D.** The test methods and procedures required by this Section are as follows:
  1. The reference methods in the Arizona Testing Manual and 40 CFR 60, Appendix A shall be used to determine compliance with this Section as follows:
    - a. Method A-2 for the measurement of particulate matter,
    - b. Method 1 for sample and velocity traverses,
    - c. Method 2 for velocity and volumetric flow rate,
    - d. Method 3 for gas analysis,
    - e. Method 9 for visible emissions.
  2. For Method A-2, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.85 dry standard cubic meters per hour (0.53 dry standard cubic feet per minute), except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Director.

**Historical Note**

Section R18-2-729 renumbered from R18-2-529 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2).

**R18-2-730. Standards of Performance for Unclassified Sources**

- A.** No existing source which is not otherwise subject to standards of performance under this Article or Article 9 or 11 of this

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Chapter, shall cause or permit the emission of pollutants at rates greater than the following:

1. For particulate matter discharged into the atmosphere in any one hour from any unclassified process source in total quantities in excess of the amounts calculated by one of the following equations:
    - a. For process sources having a process weight rate of 60,000 pounds per hour (30 tons per hour) or less, the maximum allowable emissions shall be determined by the following equation:
 
$$E = 4.10P^{0.67}$$
 where:  
 E = the maximum allowable particulate emissions rate in pounds-mass per hour.  
 P = the process weight rate in tons-mass per hour.
    - b. For process weight rate greater than 60,000 pounds per hour (30 tons per hour), the maximum allowable emissions shall be determined by the following equation:
 
$$E = 55.0P^{0.11-40}$$
 where "E" and "P" are defined as indicated in subsection (A)(1)(a).
  2. Sulfur dioxide – 600 parts per million.
  3. Nitrogen oxides expressed as NO<sub>2</sub> – 500 parts per million.
- B.** For purposes of this Section, the total process weight from all similar units employing a similar type process shall be used in determining the maximum allowable emission of particulate matter.
- C.** Actual values shall be calculated from the applicable equations and rounded off to two decimal places.
- D.** No person shall emit gaseous or odorous materials from equipment, operations or premises under the person's control in such quantities or concentrations as to cause air pollution.
- E.** No person shall operate or use any machine, equipment, or other contrivance for the treatment or processing of animal or vegetable matter, separately or in combination, unless all gaseous vapors and gas entrained effluents from such operations, equipment, or contrivance have been either:
1. Incinerated to destruction, as indicated by a temperature measuring device, at not less than 1,200°F if constructed or reconstructed prior to January 1, 1989, or 1,600°F with a minimum residence time of 0.5 seconds if constructed or reconstructed thereafter; or
  2. Passed through such other device which is designed, installed and maintained to prevent the emission of odors or other air contaminants and which is approved by the Director.
- F.** Materials including solvents or other volatile compounds, paints, acids, alkalies, pesticides, fertilizers and manure shall be processed, stored, used and transported in such a manner and by such means that they will not evaporate, leak, escape or be otherwise discharged into the ambient air so as to cause or contribute to air pollution. Where means are available to reduce effectively the contribution to air pollution from evaporation, leakage or discharge, the installation and use of such control methods, devices, or equipment shall be mandatory.
- G.** Where a stack, vent or other outlet is at such a level that fumes, gas mist, odor, smoke, vapor or any combination thereof constituting air pollution is discharged to adjoining property, the Director may require the installation of abatement equipment or the alteration of such stack, vent, or other outlet by the owner or operator thereof to a degree that will adequately dilute, reduce or eliminate the discharge of air pollution to adjoining property.
- H.** No person shall allow hydrogen sulfide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.03 parts per million by volume for any averaging period of 30 minutes or more.
- I.** No person shall cause, allow or permit discharge from any stationary source carbon monoxide emissions without the use of complete secondary combustion of waste gases generated by any process source.
- J.** No person shall allow hydrogen cyanide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 0.3 parts per million by volume for any averaging period of eight hours.
- K.** No person shall allow sodium cyanide dust or dust from any other solid cyanide to be emitted from any location in such manner and amount that the concentration of such emissions into the ambient air at any occupied place beyond the premises on which the source is located exceeds 140 micrograms per cubic meter for any averaging period of eight hours.
- L.** No owner or operator of a facility engaged in the surface coating of miscellaneous metal parts and products may operate a coating application system subject to this Section that emits volatile organic compounds in excess of any of the following:
1. 4.3 pounds per gallon (0.5 kilograms per liter) of coating, excluding water, delivered to a coating applicator that applies clear coatings.
  2. 3.5 pounds per gallon (0.42 kilograms per liter) of coating, excluding water delivered to a coating applicator in a coating application system that is air dried or forced warm air dried at temperatures up to 194°F (90°C).
  3. 3.5 pounds per gallon (0.42 kilograms per liter) of coating, excluding water, delivered to a coating applicator that applies extreme performance coatings.
  4. 3.0 pounds per gallon (0.36 kilograms per liter) of coating, excluding water, delivered to a coating applicator for all other coatings and application systems.
- M.** If more than one emission limitation in subsection (L) applies to a specific coating, then the least stringent emission limitation shall be applied.
- N.** All VOC emissions from solvent washings shall be considered in the emission limitations in subsection (L), unless the solvent is directed into containers that prevent evaporation into the atmosphere.

**Historical Note**

Renumbered from R18-2-530 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 15 A.A.R. 281, effective March 7, 2009 (Supp. 09-1).

**R18-2-731. Standards of Performance for Existing Municipal Solid Waste Landfills**

- A.** This Section applies to each municipal solid waste landfill (MSW landfill) at which:
1. Construction, reconstruction, or modification began on or before July 17, 2014; and
  2. Waste was accepted at any time since November 8, 1987, or additional design capacity is available for future waste deposition.
- B.** For the purposes of this Section, "Municipal solid waste landfill or MSW landfill" means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. An MSW landfill may also receive other types of RCRA (Resource Conservation and Recovery Act)

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Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of an MSW landfill may be separated by access roads. An MSW landfill may be publicly or privately owned.

- C. MSW landfills covered by this Section shall comply with 40 CFR 60, Subpart Cf, effective as of the date of EPA approval of the state plan under section 111(d) of the Act. 40 CFR 60, Subpart WWW, "Standards of Performance for Municipal Solid Waste Landfills," will remain in effect until Arizona's state plan implementing Subpart Cf is approved by EPA. 40 CFR 60, Subpart Cf "Emissions Guidelines and Compliance Times for Municipal Solid Waste Landfills," as adopted on August 29, 2016 (and no future amendments) is hereby incorporated by reference as applicable requirements. MSW landfills may meet the requirements of Subpart Cf by complying with 40 CFR 60, Subpart XXX. 40 CFR 60, Subpart XXX "Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction or Modification After July 17, 2014," is incorporated by reference in R18-2-901.

**Historical Note**

Adopted effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended by final rulemaking at 24 A.A.R. 1864, effective August 10, 2018 (Supp. 18-2).

**R18-2-732. Expired****Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Amended by final rulemaking at 13 A.A.R. 2157, effective August 4, 2007 (Supp. 07-2). Section expired under A.R.S. § 41-1056(J) at 21 A.A.R. 15, effective September 30, 2015 (Supp. 15-4).

**R18-2-733. Repealed****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Section repealed by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

**R18-2-733.01. Repealed****Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Section repealed by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

**R18-2-734. Standards of Performance for Mercury Emissions from Electric Generating Units**

- A. Applicability and Purpose. The requirements of this Section apply to owners and operators of electric generating units. The purpose of this Section is to establish:
1. Interim standards for mercury emissions from electric generating units that shall apply until compliance with the emissions limits in the federal mercury standards is required.
  2. State standards for mercury emissions from electric generating units that shall apply if the federal mercury standards are vacated by a federal court or repealed by the administrator.
- B. Interim Standards. The following requirements shall apply until the date that compliance with the federal mercury standards or subsection (G) is required:

1. The owners and operators shall comply with the mercury control strategy operations and maintenance plan approved as part of the permit for the electric generating plant.
  2. The owners and operators shall operate and maintain the electric generating plant, including any associated air pollution control equipment, in a manner consistent with good air pollution control practices for minimizing mercury emissions. This requirement shall apply to any air pollution control equipment installed pursuant to subsection (B)(1) or to any new air pollution control equipment installed to comply with the federal mercury standards if such equipment replaces equipment installed pursuant to subsection (B)(1).
- C. Incorporation of Federal Mercury Standards. The federal mercury standards in 40 CFR Part 63, Subpart UUUUU, as of July 1, 2013 (and no future amendments or editions) are incorporated by reference and shall remain effective to the extent specified in this Section regardless of whether they are vacated by a federal court or repealed by the administrator. Subpart UUUU of 40 C.F.R. Part 63 is published by the United States Government Printing Office, 732 North Capital Street, NW, Washington, DC 20401-0001, is on file with the Department of Environmental Quality, 1110 West Washington Street, Phoenix, Arizona 85007, and is available at the Arizona State Library, Archives & Public Records, 1700 West Washington Street, Phoenix, Arizona 85007 and at other Federal depository libraries in the state (see [http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st\\_12=AZ&flag=searchp](http://catalog.gpo.gov/fdlpdir/FDLPdir.jsp?st_12=AZ&flag=searchp)). It is also available online at <http://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR>. The owners and operators shall provide to the director a copy of all notices and reports submitted to the Administrator under the federal mercury standards, except for any reports or data submitted to the Administrator through electronic systems (for example, Compliance and Emissions Data Reporting Interface (CEDRI), Emission Collection Monitoring Plan System Client Tool (ECMPS) or the Emissions Reporting Tool (ERT)).
- D. Notice of State Standard Applicability. The director shall provide notice to the responsible official for each electric generating plant of any repeal or federal court vacatur of the federal mercury standards. If the repeal or vacatur occurred after the date the electric generating plant was required to comply with the emission limits in the federal mercury standards, the plant shall continue to comply with the federal mercury standards until the date that compliance with subsection (G) is required.
- E. Application for Permit Revision. Within 120 days of receipt of written notice from the director under subsection (D), the owners and operators shall submit an application for a permit revision that proposes:
1. The mercury emission limit or limits in subsection (G) that shall apply to the electric generating plant.
  2. A date for demonstrating compliance with the mercury emission limit consistent with subsection (F)(2).
  3. A mercury monitoring plan consistent with subsection (H)(2).
- F. Permit Revision Setting State Standard. A permit revision granted in response to the application submitted under subsection (E) shall contain the following conditions:
1. The mercury emission limit or limits in subsection (G) that shall apply to the electric generating plant.
  2. The date compliance with the emission limit or limits shall be required. Unless the application requests an earlier date, the compliance date shall be the later of December 31, 2016 or the end of the first averaging period commencing no later than 180 days after permit issuance.

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- 3. The date for demonstrating initial compliance with the emission limit or limits, which shall be 45 days after completion of the first full averaging period after the compliance date established under subsection (F)(2).
- 4. The date on which compliance with subsection (B), or the obligation to comply with the federal mercury standards in subsection (D), as applicable, shall no longer be required.
- 5. A mercury monitoring plan consistent with subsection (H).
- 6. Compliance reporting requirements consistent with subsection (I).

**G.** State Mercury Emission Limits. Emissions from an electric generating unit shall comply with one or more of the emission limits specified in the following table, as selected by the owners and operators under subsection (F).

No.	Limit	Averaging Period	Applicable To
1.	10 percent of inlet mercury	Rolling 12-month	Electric generating plant
2.	0.0087 pounds per gigawatt-hour	Rolling 12-month	Electric generating plant
3.	0.011 pounds per gigawatt-hour	Rolling 90-boiler operating days	EGUs identified in averaging group
4.	1.0 pounds per Trillion Btu	Rolling 90-boiler operating days	EGUs identified in averaging group
5.	0.013 pounds per gigawatt-hour	Rolling 30-boiler operating days	Individual electric generating unit
6.	1.2 pounds per Trillion Btu	Rolling 30-boiler operating days	Individual electric generating unit

- H.** Compliance Monitoring and Recordkeeping.
- 1. Compliance with subsection (G) shall be determined using a mercury CEMS or sorbent trap monitoring system pursuant to Appendix A of the federal mercury standards and in accordance with an approved mercury monitoring plan.
  - 2. The mercury monitoring plan shall include the following elements:
    - a. Identification of the emission limit or limits in subsection (G) for which compliance will be demonstrated.
    - b. Identification of whether a mercury CEMS or sorbent trap monitoring system will be used as the primary compliance method. Backup methods may be identified and approved in the plan.
    - c. Description of the parameters that will be monitored, including mercury concentration, stack flow, fuel mercury content, fuel rate, electricity generation rate, moisture percent, and any diluent or other gas or process parameters necessary to calculate compliance in terms of the applicable emission limit.
    - d. Description and example of the calculations required to convert monitored parameters to mercury emissions in terms of the emission limit.

- e. Establishment of CEMS analyzer data availability, and QA/QC requirements.
  - f. Procedures for completing an initial demonstration of compliance, except as otherwise provided in subsection (I)(1).
- 2. At least once per month, the mercury emissions data shall be compiled into a record demonstrating compliance with the emission limit or limits established in the permit revision issued under subsection (F). This record shall be completed no later than the 15th day of the following month.
  - 3. Records shall be maintained as follows:
    - a. Records demonstrating compliance with the emissions limits shall be maintained for five years.
    - b. If a mercury CEMS is used, daily CEMS data, QA/QC data identified in the mercury monitoring plan, any maintenance work conducted on the CEMS or data logging system, and a calculation of all mercury CEMS downtime shall be maintained for five years.
    - c. If a sorbent trap monitoring system is used, all sorbent monitoring data and any maintenance work conducted on the system shall be maintained for five years.

- I.** Reporting. The owners and operators shall submit to the director the following reports:
- 1. An initial demonstration of compliance, which must be submitted to the director within 180 days after completion of the first full averaging period. This requirement shall not apply to an electric generating unit if an initial demonstration of compliance has been completed for that unit under 40 C.F.R. 63.10005(d)(3) and the demonstration shows compliance with subsection (G) for that unit. The report shall include:
    - a. The name of the electric generating plant and electric generating units.
    - b. The applicable emission limit or limits for the plant or the electric generating units.
    - c. The mercury emissions for the plant, group of averaged units, or each unit, as applicable, during the initial compliance demonstration in terms of the applicable standard.
    - d. A certification by a responsible official.
  - 2. Semiannual compliance reports, which must be submitted to the director on the dates established in the electric generating plant's air quality permit. The report shall include:
    - a. The name of the electric generating plant and electric generating units;
    - b. The applicable emission limit or limits for the plant or the electric generating units.
    - c. The mercury emissions for the plant, or each unit, as applicable, for each month during the six month period ending the month prior to the semiannual report in terms of the applicable standard.
    - d. An explanation of any excess emissions, the duration of the excess emissions, and corrective actions taken, if any, to resolve those excess emissions.
    - e. A certification by a responsible official.
- J.** Exemption. After receipt of notice under subsection (D), in lieu of submitting the permit revision application required by subsection (E), the owners and operators may notify the director in writing that they elect to comply with the vacated or repealed federal mercury standards at an electric generating plant. If the owners and operators for an electric generating plant make this election, the plant shall be exempt from subsections (E) through (I). If the owners and operators of an electric plant elect this option:

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1. "Administrator" shall mean "Director" whenever it appears in the federal mercury standards or regulations referenced therein.
2. "EPA" shall mean "ADEQ, Air Quality Division" whenever it appears in the federal mercury standards or regulations referenced therein.
3. In lieu of reports submitted to the Administrator through electronic systems (for example, Compliance and Emissions Data Reporting Interface (CEDRI), Emission Collection Monitoring Plan System Client Tool (ECMPS) or Emissions Reporting Tool (ERT)) pursuant to the federal mercury standards, the owners or operators shall submit to the Director, semiannually at the time required by permit, the RATA or the rolling 30-day or rolling 90-day average mercury value for each EGU or the plant, as applicable.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 4701, effective January 29, 2007 (Supp. 06-4). Amended by final rulemaking at 21 A.A.R. 711, effective June 30, 2015 (Supp. 15-2).

**Table 1. Expired****Historical Note**

Table 1 adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Table 1 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective October 10, 2017 (Supp. 17-4).

**Table 2. Expired****Historical Note**

Table 2 adopted by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999 (Supp. 99-3). Table 2 expired under A.R.S. § 41-1056(J) at 23 A.A.R. 3427, effective October 10, 2017 (Supp. 17-4).

**ARTICLE 8. EMISSIONS FROM MOBILE SOURCES (NEW AND EXISTING)****R18-2-801. Classification of Mobile Sources**

- A. This Article is applicable to mobile sources which either move while emitting air contaminants or are frequently moved during the course of their utilization but are not classified as motor vehicles, agricultural vehicles, or agricultural equipment used in normal farm operations.
- B. Unless otherwise specified, no mobile source shall emit smoke or dust the opacity of which exceeds 40%.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-801 renumbered to Section R18-2-901, new Section R18-2-801 renumbered from R18-2-601 effective November 15, 1993 (Supp. 93-4).

**R18-2-802. Off-road Machinery**

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any off-road machinery, smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B. Off-road machinery shall include trucks, graders, scrapers, rollers, locomotives and other construction and mining machinery not normally driven on a completed public roadway.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-802 renumbered to Section R18-2-902, new Section R18-2-802 renumbered from R18-2-602 effective November 15, 1993 (Supp. 93-4).

**R18-2-803. Heater-planer Units**

No person shall cause, allow or permit to be emitted into the atmosphere from any heater-planer operated for the purpose of reconstructing asphalt pavements smoke the opacity of which exceeds 20%. However three minutes' upset time in any one hour shall not constitute a violation of this Section.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Former Section R18-2-803 renumbered to Section R18-2-903, new Section R18-2-803 renumbered from R18-2-603 effective November 15, 1993 (Supp. 93-4).

**R18-2-804. Roadway and Site Cleaning Machinery**

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any roadway and site cleaning machinery smoke or dust for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%. Visible emissions when starting cold equipment shall be exempt from this requirement for the first 10 minutes.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the cleaning of any site, roadway, or alley without taking reasonable precautions to prevent particulate matter from becoming airborne. Reasonable precautions may include applying dust suppressants. Earth or other material shall be removed from paved streets onto which earth or other material has been transported by trucking or earth moving equipment, erosion by water or by other means.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Amended effective February 3, 1993 (Supp. 93-1). Former Section R18-2-804 renumbered to Section R18-2-904, new Section R18-2-804 renumbered from R18-2-604 effective November 15, 1993 (Supp. 93-4).

**R18-2-805. Asphalt or Tar Kettles**

- A. No person shall cause, allow or permit to be emitted into the atmosphere from any asphalt or tar kettle smoke for any period greater than 10 consecutive seconds, the opacity of which exceeds 40%.
- B. In addition to complying with subsection (A), no person shall cause, allow or permit the operation of an asphalt or tar kettle without minimizing air contaminant emissions by utilizing all of the following control measures:
  1. The control of temperature recommended by the asphalt or tar manufacturer;
  2. The operation of the kettle with lid closed except when charging;
  3. The pumping of asphalt from the kettle or the drawing of asphalt through cocks with no dipping;
  4. The dipping of tar in an approved manner;
  5. The maintaining of the kettle in clean, properly adjusted, and good operating condition;
  6. The firing of the kettle with liquid petroleum gas or other fuels acceptable to the Director.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3).

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Former Section R18-2-805 renumbered to Section R18-2-905, new Section R18-2-805 renumbered from R18-2-605 effective November 15, 1993 (Supp. 93-4).

### ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS

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

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

1. Subpart A - General Provisions.
2. Subpart D - Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Standards of Performance for Small Industrial- Commercial-Institutional Steam Generating Units.
6. Subpart E - Standards of Performance for Incinerators.
7. Subpart Ea - Standards of Performance for Municipal Waste Combustors for Which Construction is Commenced after December 20, 1989 and on or Before September 20, 1994.
8. Subpart Eb - Standards of Performance for Large Municipal Waste Combustors for Which Construction is Commenced after September 20, 1994 or for Which Modification or Reconstruction is Commenced After June 19, 1996.
9. Subpart Ec - Standards of Performance for Hospital/Medical/ Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.
10. Subpart F - Standards of Performance for Portland Cement Plants.
11. Subpart G - Standards of Performance for Nitric Acid Plants.
12. Subpart Ga - Standards of Performance for Nitric Acid Plants for which Construction, Reconstruction, or Modification Commenced after October 14, 2011.
13. Subpart H - Standards of Performance for Sulfuric Acid Plants.
14. Subpart I - Standards of Performance for Hot Mix Asphalt Facilities.
15. Subpart J - Standards of Performance for Petroleum Refineries.
16. Subpart Ja - Standards of Performance for Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.
17. Subpart K - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
18. Subpart Ka - Standards of Performance for Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
19. Subpart Kb - Standards of Performance for Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
20. Subpart L - Standards of Performance for Secondary Lead Smelters.
21. Subpart M - Standards of Performance for Secondary Brass and Bronze Production Plants.
22. Subpart N - Standards of Performance for Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
23. Subpart Na - Standards of Performance for Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
24. Subpart O - Standards of Performance for Sewage Treatment Plants.
25. Subpart P - Standards of Performance for Primary Copper Smelters.
26. Subpart Q - Standards of Performance for Primary Zinc Smelters.
27. Subpart R - Standards of Performance for Primary Lead Smelters.
28. Subpart S - Standards of Performance for Primary Aluminum Reduction Plants.
29. Subpart T - Standards of Performance for Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
30. Subpart U - Standards of Performance for Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
31. Subpart V - Standards of Performance for Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
32. Subpart W - Standards of Performance for Phosphate Fertilizer Industry: Triple Superphosphate Plants.
33. Subpart X - Standards of Performance for Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
34. Subpart Y - Standards of Performance for Coal Preparation Plants.
35. Subpart Z - Standards of Performance for Ferroalloy Production Facilities.
36. Subpart AA - Standards of Performance for Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
37. Subpart AAa - Standards of Performance for Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
38. Subpart BB - Standards of Performance for Kraft Pulp Mills.
39. Subpart BBa - Standards of Performance for Kraft Pulp Mill Affected Sources for Which Construction, Reconstruction, or Modification Commenced After May 23, 2013
40. Subpart CC - Standards of Performance for Glass Manufacturing Plants.
41. Subpart DD - Standards of Performance for Grain Elevators.
42. Subpart EE - Standards of Performance for Surface Coating of Metal Furniture.
43. Subpart GG - Standards of Performance for Stationary Gas Turbines.
44. Subpart HH - Standards of Performance for Lime Manufacturing Plants.
45. Subpart KK - Standards of Performance for Lead-Acid Battery Manufacturing Plants.

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46. Subpart LL - Standards of Performance for Metallic Mineral Processing Plants.
47. Subpart MM - Standards of Performance for Automobile and Light Duty Truck Surface Coating Operations.
48. Subpart NN - Standards of Performance for Phosphate Rock Plants.
49. Subpart PP - Standards of Performance for Ammonium Sulfate Manufacture.
50. Subpart QQ - Standards of Performance for Graphic Arts Industry: Publication Rotogravure Printing.
51. Subpart RR - Standards of Performance for Pressure Sensitive Tape and Label Surface Coating Operations.
52. Subpart SS - Standards of Performance for Industrial Surface Coating: Large Appliances.
53. Subpart TT - Standards of Performance for Metal Coil Surface Coating.
54. Subpart UU - Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacture.
55. Subpart VV - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
56. Subpart VVa - Standards of Performance for Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced after November 7, 2006.
57. Subpart WW - Standards of Performance for Beverage Can Surface Coating Industry.
58. Subpart XX - Standards of Performance for Bulk Gasoline Terminals.
59. Subpart AAA - Standards of Performance for New Residential Wood Heaters.
60. Subpart BBB - Standards of Performance for Rubber Tire Manufacturing Industry.
61. Subpart DDD - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
62. Subpart FFF - Standards of Performance for Flexible Vinyl and Urethane Coating and Printing.
63. Subpart GGG - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries.
64. Subpart GGGa - Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.
65. Subpart HHH - Standards of Performance for Synthetic Fiber Production Facilities.
66. Subpart III - Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
67. Subpart JJJ - Standards of Performance for Petroleum Dry Cleaners.
68. Subpart KKK - Standards of Performance for Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
69. Subpart LLL - Standards of Performance for Onshore Natural Gas Processing; SO<sub>2</sub> Emissions.
70. Subpart NNN - Standards of Performance for Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
71. Subpart OOO - Standards of Performance for Nonmetallic Mineral Processing Plants.
72. Subpart PPP - Standards of Performance for Wool Fiberglass Insulation Manufacturing Plants.
73. Subpart QQQ - Standards of Performance for VOC Emissions From Petroleum Refinery Wastewater Systems.
74. Subpart RRR - Standards of Performance for Volatile Organic Compound Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
75. Subpart SSS - Standards of Performance for Magnetic Tape Coating Facilities.
76. Subpart TTT - Standards of Performance for Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
77. Subpart UUU - Standards of Performance for Calciners and Dryers in Mineral Industries.
78. Subpart VVV - Standards of Performance for Polymeric Coating of Supporting Substrates Facilities.
79. Subpart WWW - Standards of Performance for Municipal Solid Waste Landfills.
80. Subpart XXX - Standards of Performance for Municipal Solid Waste Landfills that Commenced Construction, Reconstruction, or Modification After July 17, 2014. This subpart and all accompanying appendices are adopted as of August 29, 2016 (and no future amendments), and are incorporated by reference as applicable requirements.
81. Subpart AAAA - Standards of Performance for Small Municipal Waste Combustion Units for Which Construction Is Commenced after August 30, 1999, or for Which Modification or Reconstruction Is Commenced after June 6, 2001.
82. Subpart CCCC - Standards of Performance for Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced after November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or after June 1, 2001.
83. Subpart EEEE - Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.
84. Subpart IIII - Standards of Performance for Stationary Compression Ignition Combustion Engines.
85. Subpart JJJJ - Standards of Performance for Stationary Spark Ignition Internal Combustion Engines.
86. Subpart KKKK - Standards of Performance for Stationary Combustion Turbines.
87. Subpart LLLL - Standards of Performance for New Sewage Sludge Incineration Units.
88. Subpart OOOO - Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution.
89. Subpart OOOOa - Standards of Performance for Crude Oil and natural gas Facilities for which Construction, Modification or Reconstruction Commenced After September 18, 2015.
90. Subpart PPPP [Reserved].
91. Subpart QQQQ - Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces.
92. Subpart TTTT - Standards of Performance for Greenhouse Gas Emission for Electric Generating Units

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1).  
 Amended effective September 26, 1990 (Supp. 90-3).  
 Amended effective February 3, 1993 (Supp. 93-1). Section R18-2-901 renumbered to R18-2-1101, new Section R18-2-901 renumbered from R18-2-801 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective

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December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3058, effective August 10, 1999, and at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 24 A.A.R. 1564, with an immediate effective date of May 2, 2018 (Supp. 18-2). Amended by final rulemaking at 24 A.A.R. 1864, effective August 10, 2018 (Supp. 18-3).

**R18-2-902. General Provisions**

- A.** As used in 40 CFR 60: "Administrator" means the Director of the Arizona Department of Environmental Quality, except that the Director shall not be authorized to approve alternate or equivalent test methods or alternative standards or work practices.
- B.** From the general standards identified in R18-2-901, delete the following:
- 40 CFR 60.4. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.
  - 40 CFR 60.5 and 60.6.
- C.** The Director shall not be delegated authority to deal with equivalency determinations or innovative technology waivers as covered in Sections 111(h)(3) and 111(j) of the Act.

**Historical Note**

Adopted effective February 26, 1988 (Supp. 88-1). Amended effective September 26, 1990 (Supp. 90-3). Section R18-2-902 renumbered to R18-2-1102, new Section R18-2-902 renumbered from R18-2-802 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4).

**R18-2-903. Standards of Performance for Fossil-fuel Fired Steam Generators**

As exceptions to 40 CFR 60.40 through 60.47:

- In place of 40 CFR 60.43(a)(2), the following language shall be substituted: 340 nanograms per joule heat input (0.8 pounds per million Btu) derived from solid fossil fuel or solid fossil fuel and wood residue.
- Delete 40 CFR 60.43(b).
- If an owner or operator of a fossil-fuel fired steam generator obtained an installation permit for two or more fuel-burning equipment or steam-power generating installations before May 14, 1979, that permitted the installation to comply with the sulfur dioxide emission standards specified in R18-2-901 and this Section as if the equipment or installations were one emission discharge point:
  - The owner or operator shall comply with the applicable sulfur dioxide emission standards in the manner specified in the installation permit;

- The Department shall incorporate the emission standards under subsection (3)(a) into each owner's or operator's operating permit as an enforceable permit condition;
  - No single fuel-burning equipment or steam-power generating installation shall emit sulfur dioxide in excess of:
    - 520 nanograms per joule heat input (1.2 pounds per million BTU) for solid fossil fuel or solid fossil fuel and wood residue; or
    - 340 nanograms per joule heat input (0.8 pounds per million BTU) for liquid fossil fuel or liquid fossil fuel and wood residue.
4. When an owner or operator subject to subsection (3) changes the equipment configuration so that each fuel-burning equipment or steam-powered generating installation constitutes one emission discharge point:
- The owner or operator shall comply with the emissions standards specified in subsection (1) and R18-2-901; and
  - The Department shall incorporate the emissions standards into the owner's or operator's operating permit as enforceable permit conditions.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-903 renumbered without change as Section R18-2-903 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-903 renumbered from R18-2-803 and amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 14 A.A.R. 230, effective March 8, 2008 (Supp. 08-1).

**R18-2-904. Standards of Performance for Incinerators**

- A.** Incinerators with a charging rate of more than 45 metric tons or 49.6 tons per day shall conform to the requirements of 40 CFR 60.50 through 60.54.
- B.** Incinerators with a charging rate of 45 metric tons or 49.6 tons per day or less that commence construction or modification after May 14, 1979, shall conform to the requirements of 40 CFR 60.52 through 60.54 and of R18-2-704(A).

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-904 renumbered without change as Section R18-2-904 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-904 renumbered from R18-2-804 and amended effective November 15, 1993 (Supp. 93-4).

**R18-2-905. Standards of Performance for Storage Vessels for Petroleum Liquids**

In addition to 40 CFR 60.110 - 60.113:

- Any petroleum liquid storage tank of less than 40,000 gallons (151,412 liters) capacity shall be equipped with a submerged filling device or acceptable equivalent as determined by the Director for the control of hydrocarbon emissions.
- All facilities for dock loading of petroleum products having a vapor pressure of 2.0 pounds per square inch absolute, or greater, at loading pressure shall provide for submerged filling or other acceptable equivalent for control of hydrocarbon emissions.
- All pumps and compressors which handle volatile organic compounds shall be equipped with mechanical

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seals or other equipment of equal efficiency to prevent the release of organic contaminants into the atmosphere.

**Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-905 renumbered without change as Section R18-2-905 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1). New Section R18-2-905 renumbered from R18-2-805 effective November 15, 1993 (Supp. 93-4).

**R18-2-906. Repealed****Historical Note**

Adopted effective May 14, 1979 (Supp. 79-1). Amended effective May 28, 1982 (Supp. 82-3). Former Section R9-3-906 renumbered without change as Section R18-2-906 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

**R18-2-907. Reserved****R18-2-908. Reserved****R18-2-909. Reserved****R18-2-910. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-910 renumbered without change as Section R18-2-910 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

**R18-2-911. Reserved****R18-2-912. Reserved****R18-2-913. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-913 renumbered without change as Section R18-2-913 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

**R18-2-914. Reserved****R18-2-915. Reserved****R18-2-916. Reserved****R18-2-917. Reserved****R18-2-918. Reserved****R18-2-919. Reserved****R18-2-920. Reserved****R18-2-921. Reserved****R18-2-922. Repealed****Historical Note**

Adopted effective August 9, 1985 (Supp. 85-4). Former Section R9-3-922 renumbered without change as Section R18-2-922 (Supp. 87-3). Repealed effective February 26, 1988 (Supp. 88-1).

**ARTICLE 10. MOTOR VEHICLES; INSPECTIONS AND MAINTENANCE****R18-2-1001. Definitions**

The following definitions apply to this Article:

1. Abbreviations and symbols are defined as follows:
  - a. "A/F" means air/fuel,
  - b. "CO" means carbon monoxide.

- c. "CO<sub>2</sub>" means carbon dioxide.
  - d. "EGR" means exhaust gas recirculation.
  - e. "GVWR" means gross vehicle weight rating.
  - f. "HC" means hydrocarbon.
  - g. "HP" means horsepower.
  - h. "LNG" means liquefied natural gas.
  - i. "LPG" means liquid petroleum gas.
  - j. "MIL" means malfunction indicator lamp.
  - k. "MPH" means miles per hour.
  - l. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
  - m. "NDIR" means nondispersive infrared.
  - n. "NO<sub>x</sub>" means the sum of nitrogen oxide and nitrogen dioxide.
  - o. "%" means percent.
  - p. "OEM" means original equipment manufacturer.
  - q. "OBD" means on-board diagnostics.
  - r. "PCV" means positive crankcase ventilation.
  - s. "PPM" means parts per million by volume.
  - t. "RPM" means revolutions per minute.
  - u. "VIN" means vehicle identification number.
2. "All-terrain vehicle" (ATV) means a vehicle that is defined as an "all-terrain vehicle" in A.R.S. § 28-101.
  3. "Alternative fuel vehicle" means a vehicle powered by an alternative fuel as defined in A.R.S. § 1-215(4).
  4. "Annual test" means a test for which an annual frequency is specified in the applicable table in R18-2-1006(B).
  5. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
  6. "Area A" has the meaning in A.R.S. § 49-541.
  7. "Area B" has the meaning in A.R.S. § 49-541.
  8. "Biennial test" means a test for which a biennial frequency is specified in the applicable table in R18-2-1006(B).
  9. "Calibration gas" means a reference gas or gas mixture with assigned concentrations that is used to check the accuracy of emissions analyzers.
  10. "Certificate of compliance" means a uniquely numbered document issued as part of the vehicle inspection report by a state station at the time of a vehicle inspection indicating that the vehicle has met the emissions standards.
  11. "Certificate of exemption" means a uniquely numbered document issued by the Director providing an exemption from the testing requirements of this Article for a vehicle that is outside of the state on the emissions compliance expiration date.
  12. "Certificate of inspection" means a uniquely numbered document issued by the Director indicating that a vehicle has been inspected under A.R.S. § 49-546 and has passed inspection.
  13. "Certificate of waiver" means a uniquely numbered document issued by the Department indicating that the requirement of passing reinspection has been waived for a vehicle under A.R.S. § 49-542.
  14. "CFR" means the Code of Federal Regulations, with standard reference in this Chapter by Title and Part, so that "40 CFR 280" means Title 40 of the Code of Federal Regulations, Part 280.
  15. "Collectible vehicle" has the meaning in A.R.S. § 49-542(Z).
  16. "Constant 4-wheel drive vehicle" means any 4-wheel drive vehicle that cannot be converted to 2-wheel drive except by disconnecting one of the vehicle's drive shafts, or any vehicle equipped with non-disengageable traction

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- control which cannot be safely tested on conventional 2-wheel drive dynamometers.
17. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
  18. "Contractor" means a person, business, firm, partnership, or corporation with whom the Director has a contract that provides for the operation of one or more official emissions inspection stations.
  19. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer or used motor vehicle dealer.
  20. "Department" means the Department of Environmental Quality.
  21. "Diagnostic Trouble Code" (DTC) means an alphanumeric code which is set in a vehicle's on-board diagnostic system when the OBD system detects an emissions control device or system failure.
  22. "Diesel" or "Diesel Fuel" has the same meaning as in A.R.S. § 3-3401.
  23. "Director" means the Director of the Department of Environmental Quality.
  24. "Director's certificate" means a uniquely numbered document issued by the Director in certain circumstances for the vehicle to show evidence of meeting the minimum standards for registration.
  25. "Electrically-powered vehicle" means a vehicle that uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle to generate electricity.
  26. "Emissions compliance expiration date" means:
    - a. Each registration expiration date for a vehicle subject to an annual test; and
    - b. The registration expiration date in the second year after the initial biennial test required under this Article or R18-2-1005(B) for a vehicle subject to a biennial test.
  27. "Emissions inspection station permit" means a certificate issued by the Director authorizing the holder to perform vehicle emissions inspections under this Article.
  28. "Exhaust emissions" means products of combustion emitted into the atmosphere from any opening in the exhaust system downstream of the exhaust ports of a motor vehicle engine.
  29. "Exhaust pipe" means the pipe that attaches to the muffler and exits the vehicle.
  30. "Fleet emissions inspection station" or "fleet station" means any vehicle emissions inspection facility operated under a permit issued pursuant to A.R.S. § 49-546.
  31. "Fleet vehicle" means any vehicle owned, leased, or operated by an individual or entity granted a vehicle emissions testing license under A.R.S. § 49-546.
  32. "Fuel" means any material that is burned within the confines of a vehicle to propel the vehicle.
  33. "Fuel Cell Electric Vehicle" or "FCEV" means a zero-emission vehicle that runs on compressed hydrogen fed into a fuel cell stack that produces electricity to power the vehicle.
  34. "Golf cart" means a motor vehicle that is defined as a "golf cart" in A.R.S. § 28-101.
  35. "Government vehicle" means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
  36. "Gross vehicle weight rating" (GVWR) means the maximum vehicle weight that a vehicle is designed for as established by the manufacturer.
  37. "Idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed  $\pm$  100 RPM but without pressure exerted on the accelerator.
  38. "Inspection" means the mandatory vehicle emissions inspection including the tampering inspection.
  39. "Mass emissions measurement" means measurement of a vehicle's exhaust in mass units such as grams.
  40. "Maximum required repair cost" means the applicable maximum required repair cost under R18-2-1010(F) or (G) for a vehicle that has failed inspection.
  41. "Model year" means the date of manufacture of the original vehicle within the annual production period of the vehicle as designated by the manufacturer or, if a reconstructed vehicle, the first year of titling.
  42. "Motorcycle" means a vehicle that is defined as a "motorcycle" as in A.R.S. § 28-101.
  43. "New aftermarket catalytic converter" means a new catalytic converter manufactured as an OEM part that meets the standards under 40 CFR 86.
  44. "On-board diagnostics" or "OBD" means an on-board diagnostic system required by Section 202(m) of the Clean Air Act. For the purposes of the Article, OBD certification refers to United States Environmental Protection Agency OBD certification.
  45. "Opacity" means the degree of absorption of transmitted light.
  46. "Reconditioned OEM catalytic converter" means a catalytic converter remanufactured, as a non-OEM part, with new catalytic material housed in the original catalyst casing.
  47. "Recognized repair facility" means a business with an Arizona Department of Revenue transaction privilege tax license pursuant to Title 15, Chapter 5 of the Arizona Revised Statutes whose primary purpose is vehicle repair, and who has at least one employee with a nationally recognized certification for emissions-related diagnosis and repair.
  48. "Reconstructed vehicle" means a vehicle that has been assembled or constructed largely by means of essential parts, new or used, derived from vehicles or makes of vehicles of various names, models and types or that, if originally otherwise constructed, has been materially altered by the removal of essential parts or by the addition or substitution of essential parts, new or used, derived from other vehicles or makes of vehicles. For the purposes of this paragraph, "essential parts" means integral and body parts, the removal, alteration or substitution of which will tend to conceal the identity or substantially alter the appearance of the vehicle.
  49. "Specially constructed vehicle" means any vehicle not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles.
  50. "State inspector" means an employee of the Department designated to perform quality assurance or waiver functions under this Article.
  51. "State station" means a facility, other than a fleet emissions inspection station, established for the purpose of conducting inspections under A.R.S. § 49-542.
  52. "Tampering" means removing, defeating, or altering an emissions control device that was installed on a vehicle at the time the vehicle was manufactured.

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53. "Two-stroke vehicle" means a vehicle equipped with an engine that requires one revolution of the crankshaft for each power stroke.
54. "Vehicle" or "Motor Vehicle" means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.
55. "Vehicle emissions inspector" means an individual who is licensed by the Director to perform vehicle emissions inspections under this Article.
56. "Waiver inspector" means an employee of the contractor or the Department who is authorized to issue waivers under R18-2-1008.
57. "Zero Emissions Vehicle" means a battery electric vehicle that runs on electricity stored in the batteries and has only an electric motor rather than an internal combustion engine, or a fuel cell electric vehicle that produces no emissions from the on-board source of power.

**Historical Note**

Former Section R9-3-1001 repealed, new Section R9-3-1001 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1001 repealed, former Section R9-3-1002 renumbered and amended as Section R9-3-1001 effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1001 renumbered as Section R18-2-1001 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1002. Applicable Implementation Plan**

- A. Substantive revisions to the rules in this article that are included in the Arizona State Clean Air Act Implementation Plan cannot become effective until approved by the Administrator of the United States Environmental Protection Agency. Amendments adopted by the Department but not yet approved as of the date of the latest amendments are therefore identified in this Article as not applying until the Administrator approves them.
- B. The Administrator's approvals of revisions to an applicable implementation plan are published as final rules in the Federal Register, which is available online at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. The Department publishes a list of Article 10 provisions approved since the last revisions to the Article at: <http://azdeq.gov/VECS/Rulemaking>.

**Historical Note**

New Section made by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle Emissions Inspection Program**

- A. The following vehicles shall be inspected according to this Article:
  1. A vehicle to be registered within Area A or Area B. For the purposes of this Article, registration within Area A or Area B shall be determined by the vehicle owner's per-

manent and actual residence. The permanent address in the MVD database shall be presumed to be the owner's permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) is not evidence of the owner's permanent and actual residence;

2. Each vehicle delivered to a retail purchaser by a dealer licensed to sell used motor vehicles under A.R.S. Title 28 and whose place of business is located in Area A or Area B;
  3. Each vehicle registered outside Area A and Area B but used to commute to the driver's principal place of employment located within Area A or Area B;
  4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
  5. An Area A or Area B vehicle owned or operated by the United States, this state, or a political subdivision of this state without regard to whether those vehicles are required to be registered in this state.
- B. The following vehicles are exempt from the inspection requirements of this Article:
1. A vehicle manufactured in or before the 1966 model year;
  2. A vehicle leased to a person residing outside Area A and Area B by a leasing company whose place of business is in Area A or Area B, except as provided in subsection (A)(3);
  3. A vehicle sold between motor vehicle dealers;
  4. A zero-emissions vehicle;
  5. An apportioned vehicle;
  6. A golf cart;
  7. A vehicle with an engine displacement of less than 90 cubic centimeters;
  8. A vehicle registered at the time of change of name of ownership if an emissions test is current and valid, except when the change results from the sale by a dealership whose place of business is located in Area A or Area B;
  9. A vehicle for which a current certificate of exemption or Director's certificate is issued;
  10. A new vehicle before the sixth registration year after initial purchase or lease; except that:
    - a. A reconstructed vehicle or specially constructed vehicle is not exempt.
    - b. A vehicle converted to operate on an alternative fuel, as defined in A.R.S. § 1-215, is not exempt.
    - c. A vehicle failing an emissions inspection the owner chooses to have under A.R.S. § 49-543 is not exempt for the current registration year.
  11. A vehicle designed to operate exclusively on hydrogen, as defined in A.R.S. § 1-215;
  12. A collectible vehicle;
  13. A motorcycle;
  14. An all-terrain vehicle (ATV);
  15. These exemptions apply after the Administrator approves this subsection, (B)(15), into the applicable implementation plan:
    - a. Cranes and oversized vehicles that require permits pursuant to A.R.S. §§ 28-1100, 28-1103, and 28-1144;
    - b. A vehicle not in use and owned by a resident of this state while on active military duty outside of this state.
- C. Government vehicles operated in Area A or Area B and not exempted by this Article shall be emissions inspected according to R18-2-1017.

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**Historical Note**

Former Section R9-3-1003 repealed, new Section R9-3-1003 adopted effective January 13, 1976; Amended as an emergency effective January 19, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1003 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1003 renumbered as Section R18-2-1003 and amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1004. Repealed****Historical Note**

Former Section R9-3-1004 repealed, new Section R9-3-1004 adopted effective January 13, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1004 renumbered as Section R18-2-1004 and amended effective August 1, 1988 (Supp. 88-3). Section repealed by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

**R18-2-1005. Time of Inspection**

- A.** All Area A and Area B vehicles subject to an annual test shall be inspected at the following times:
1. For a non-fleet vehicle, within 90 days before each registration expiration date.
  2. For a fleet vehicle inspected at a licensed fleet station, at least once within each 12 month period following any initial registration.
  3. For a government vehicle:
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity and then annually on or before the anniversary date of the previous inspection;
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and then annually on or before the anniversary date of the previous inspection; and
    - c. A government vehicle is subject to testing on the anniversary of its date of acquisition.
  4. For a vehicle registered outside Area A and Area B and used to commute to the driver's principal place of work located in Area A or Area B, upon vehicle registration and annually thereafter.
  5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 calendar days following the date of initial registration at the institution located in Area A or Area B and annually thereafter.
- B.** All Area A and Area B vehicles subject to a biennial test shall be inspected at the following times:

1. For a non-fleet vehicle, within 90 days before the vehicle's emissions compliance expiration date.
  2. For a fleet vehicle inspected at a fleet station, at least once within each successive 24 month period following initial registration.
  3. For a government vehicle:
    - a. For a vehicle not exempt under R18-2-1003(B)(10), within 12 months after acquisition by the operating entity, and biennially thereafter, on or before the anniversary date of the previous inspection; or
    - b. For a vehicle exempt under R18-2-1003(B)(10), within 90 days after the vehicle becomes subject to testing, and biennially thereafter, on or before the anniversary date of the previous inspection.
  4. For a vehicle registered outside Area A or Area B but used to commute to the driver's principal place of employment located in Area A or Area B, upon vehicle registration and biennially thereafter.
  5. For a vehicle owned by a person subject to A.R.S. §§ 15-1444(D) or 15-1627(G), within 30 days following the date of initial registration at the institution located in Area A or Area B and biennially thereafter.
- C.** All vehicles sold by a dealer licensed to sell used motor vehicles under A.R.S. Title 28, whose place of business is located in Area A or Area B, shall pass the applicable emissions test prescribed by R18-2-1006 before delivery of the vehicle to a retail purchaser.
- D.** An Area B vehicle being registered in Area A is subject to the appropriate annual or biennial test from Area A before registration even if the Area A test, or test period, is different from the test required for the same vehicle in Area B.
- E.** Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that a motor vehicle that fails the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if:
1. The initial test is accomplished before the emissions compliance expiration date; and
  2. The registration renewal is received by MVD within 30 days of the initial test.
- F.** An owner of a vehicle may submit the vehicle for emissions inspection more than 90 days before the emissions compliance expiration date but the inspection does not satisfy the registration testing requirement under R18-2-1003.

**Historical Note**

Former Section R9-3-1005 repealed, new Section R9-3-1005 adopted effective January 31, 1976 (Supp. 76-1). Amended effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-2). Former Section R9-3-1005 as amended effective February 20, 1980 and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1005 renumbered as Section R18-2-1005 and subsections (A) and (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002

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(Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1006. Emissions Test Procedures**

- A. This Section establishes the testing requirements for vehicles in the State of Arizona. Subsection (B) identifies which tests apply to a particular type and model year of vehicle. Subsection (C) establishes the procedures and criteria for, passing, failing, or being rejected from each test.
- B. Test applicability.
  - 1. Area A and Area B non-diesel. The following general requirements govern test applicability for non-diesel vehicles in both Area A and Area B:
    - a. A rotary engine shall be inspected as a 4-stroke engine with four cylinders or less.
    - b. For a vehicle in which an engine has been replaced:
      - i. A vehicle owner shall not install a heavy-duty engine in a light-duty chassis.
      - ii. A vehicle owner shall not install a light-duty engine in a heavy-duty chassis.
      - iii. The replacement engine package shall include all emissions control equipment and devices

that were required by the manufacturer for an engine-chassis certification. All emissions control equipment and devices shall be properly installed and in operating condition, and the resulting engine-chassis configuration shall be equivalent to a verified configuration of the same, or newer, model year as that of the vehicle chassis.

- iv. The Department shall inspect the vehicle according to the model year of the vehicle chassis.
- 2. Area A Non-Diesel. Non-diesel vehicles in Area A are subject to the test procedures identified in this subsection:
  - a. Vehicles other than alternative fuel vehicles operated by a school district in Area A, heavy duty alternative fuel vehicles, reconstructed vehicles, and constant 4-wheel-drive vehicles that are not equipped with OBD, are subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area A Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	Annual	Loaded test Functional gas cap	C.6 C.16

- i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(a)(i), into the applicable implementation plan:

Area A Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1996 or Later	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Biennial	Transient loaded and evaporative system pressure Functional gas cap Tampering	C.5 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	Any	No	Annual	Loaded test Functional gas cap	C.6 C.16

- b. Alternative fuel vehicles operated by a school district in Area A are subject to the following testing procedures until the Administrator approves subsection (B)(2)(b)(i) into the applicable implementation

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plan. After subsection (B)(2)(b)(i) has been approved into the applicable implementation plan,

alternative fuel vehicles operated by a school district in Area A will be subject to subsection (B)(2)(b)(i).

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures Until SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.8 C.16

i. Test procedures that apply after the Administrator approves this subsection, (B)(2)(b)(i), into the applicable implementation plan.

Area A Alt. Fuel Vehicles Operated by a School District Testing Procedures After SIP Revision is Approved				
Model Year	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1967 through 1974	No	Annual	Loaded test Functional gas cap	C.6 C.16

c. Heavy duty alternative fuel vehicles in Area A that are not owned by a school district are subject to the following testing procedures.

Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	More than 14,500 pounds	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1975 or later	More than 14,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	More than 14,500 pounds	No	Annual	Idle test Functional gas cap	C.8 C.16

3. Area B Non-Diesel. Non-diesel vehicles in Area B are subject to the test procedures identified in this subsection:  
 a. Vehicles other than reconstructed vehicles and constant 4-wheel-drive vehicles that are not

equipped with OBD shall be subject to the following test procedures until the Administrator approves subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures Until SIP Revision is Approved				
Model Year	GVWR	Test Frequency	Tests Applicable	Test Subsection
1996 or later	8,500 pounds or less	Annual	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 through 1995	8,500 pounds or less	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1975 or later	More than 8,500 pounds	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	Annual	Idle test Functional gas cap	C.8 C.16

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- i. Test procedures that apply after the Administrator approves this subsection (B)(2)(a)(i) into the applicable implementation plan:

Area B Non-Diesel Testing Procedures After SIP Revision is Approved					
Model Year	GVWR	OBD Certified?	Test Frequency	Tests Applicable	Test Subsection
Any	Any	Yes	Biennial	OBD Functional gas cap Tampering	C.4 C.16 C.17
1981 or later	8,500 pounds or less	No	Annual	Loaded test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	8,500 pounds or less	No	Annual	Loaded Test Functional gas cap Tampering	C.6 C.16 C.17
1975 or later	More than 8,500 pounds	No	Annual	Idle test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Any	No	Annual	Idle test Functional gas cap	C.9 C.16

- 4. Reconstructed non-diesel vehicles. Reconstructed non-diesel vehicles in both Area A and Area B are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1967 or later	Annual	Loaded test Visual gas cap	C.6 C.18

- 5. Constant 4-wheel-drive vehicles. Constant 4-wheel-drive vehicles in both Area A and Area B that are not equipped with OBD are subject to the tests specified in the following table:

Model Year	Test Frequency	Tests Applicable	Test Subsection
1975 or later	Annual	Idle Test Functional gas cap Tampering	C.8 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

- 6. Area A Diesel. Diesel vehicles that require inspection in Area A are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area A Diesel Testing Procedures Until SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
8,500 and less	Yes	Any	Annual	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

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7. Area B Diesel. Diesel vehicles that require inspection in Area B are subject to the test procedures specified in this subsection until the Administrator approves subsection (B)(8) into the applicable implementation plan:

Area B Diesel Testing Procedures Until SIP Revision is Approved				
GVWR	Model Year	Test Frequency	Tests Applicable	Test Subsection
More than 26,000 pounds	1975 or later	Annual	Loaded opacity A Tampering	C.12 C.18
More than 26,000 pounds	1967 through 1974	Annual	Loaded opacity A	C.12
More than 10,500 and less than or equal to 26,000 pounds	1975 or later	Annual	Any of the following: Loaded opacity A Loaded opacity B Tampering	C.12 C.13 C.18
More than 10,500 and less than or equal to 26,000 pounds	1967 through 1974	Annual	Any of the following: Loaded opacity A Loaded opacity B	C.12 C.13
More than 4,000 and less than or equal to 10,500	1975 or later	Annual	Loaded opacity B Tampering	C.13 C.18
More than 4,000 and less than or equal to 10,500	1967 through 1974	Annual	Loaded opacity B	C.13
4,000 pounds or less	1975 or later	Annual	Loaded opacity C Tampering	C.14 C.18
4,000 pounds or less	1967 through 1974	Annual	Loaded opacity C	C.14

8. Test procedures that apply for diesel vehicles in both Area A and Area B after the Administrator approves this subsection (B)(8) into the applicable implementation plan:

Area A and Area B Diesel Testing Procedures After SIP Revision is Approved					
GVWR	OBD Certified?	Model Year	Test Frequency	Tests Applicable	Test Subsection
Any	Yes	Any	Biennial	OBD Tampering	C.4 C.17
More than 8,500 pounds	No	1975 or later	Annual	Snap idle Tampering	C.10 C.17
More than 8,500 pounds	No	1967 through 1974	Annual	Snap idle	C.10
More than 4,000 and less than or equal to 8,500 pounds	No	1975 or later	Annual	Loaded opacity B Tampering	C.12 C.17
More than 4,000 and less than or equal to 8,500 pounds	No	1967 through 1974	Annual	Loaded opacity B	C.12
4,000 pounds or less	No	1975 or later	Annual	Loaded opacity C Tampering	C.13 C.17
4,000 pounds or less	No	1967 through 1974	Annual	Loaded opacity C	C.13

9. Dealer Fleet Testing Procedures. The test procedures in the table in this Section apply until the administrator approves subsections (B)(2)(a)(i), (B)(3)(a)(i), and (B)(8) into the applicable implementation plan for used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546. After those sections are approved into the applicable implementation plan, used vehicles sold by a motor vehicle dealer who is a fleet operator and who has been issued a permit pursuant to A.R.S. § 49-546 will be subject to the same testing procedures as vehicles tested at state stations and the table in this Section will no longer be applicable.

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Area A and Area B Dealer Fleet Testing Procedures Until SIP Revision is Approved			
Model Year	Test Frequency	Tests Applicable	Test Subsection
1981 or later	Annual	Two speed idle test Functional gas cap Tampering	C.6 C.16 C.17
1975 through 1980	Annual	Idle Test Functional gas cap Tampering	C.7 C.16 C.17
1967 through 1974	Annual	Idle Test Functional gas cap	C.8 C.16

- C. Test Requirements
1. Conditions for Pass. A vehicle passes inspection if the vehicle:
    - a. Is subjected to all applicable tests required by Subsection (B);
    - b. Is not rejected from any of the tests for any of the reasons specified in (C)(2) or (C)(3) of this subsection; and
    - c. Does not fail any of the applicable tests for any of the reasons specified in this subsection.
  2. Pre-Test Safety Inspection
    - a. The Department shall inspect each vehicle visually before the emissions test for any of the following unsafe or untestable conditions:
      - i. A fuel leak that causes wetness or pooling of fuel;
      - ii. A continuous engine or transmission oil leak onto the floor;
      - iii. A continuous engine coolant leak onto the floor such that the engine is overheating or may overheat within a short time;
      - iv. A tire on a driving wheel with less than 2/32-inch tread, metal protuberances, unmatched tire size, obviously low tire pressure as determined by visual inspection;
      - v. An exhaust pipe that does not allow for safe exhaust probe insertion;
      - vi. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units;
      - vii. Improperly operating brakes;
      - viii. Any vehicle modification or mechanical condition that prevents dynamometer operation;
      - ix. Loud internal engine noise;
      - x. An obvious exhaust leak;
      - xi. Towing a trailer or carrying a heavy load;
      - xii. Carrying explosives or any hazardous material not used as a fuel for the vehicle; or
      - xiii. Any other condition that in the judgment of the inspector makes testing unsafe or the vehicle untestable.
    - b. If the inspector determines that a vehicle is unsafe or otherwise untestable by the visual inspection the following shall apply:
      - i. The vehicle shall be rejected without an emissions test;
      - ii. The inspector shall notify the vehicle owner or operator of all untestable or unsafe conditions found;
      - iii. A state station shall not charge a fee; and
      - iv. A state station shall not test the vehicle until the cause for rejection is repaired.
  3. Test Operating Conditions. When conducting the emissions test required by this Section, the vehicle emissions inspector shall ensure that all of the following requirements are satisfied:
    - a. The vehicle shall be tested in the condition presented, unless rejected under 18-2-1006(C)(2);
    - b. The vehicle's engine shall be operating at normal temperature and not be overheating as indicated by a gauge, warning light, or boiling radiator; and
    - c. All vehicle accessories shall be turned off during testing.
  4. OBD Test.
    - a. Test Procedure. The OBD test shall consist of:
      - i. A visual inspection of the MIL function; and
      - ii. An electronic examination of the OBD computer by connecting a scan tool to the data link connector and interrogating the OBD system to determine vehicle readiness status, MIL status, and the presence of diagnostic trouble codes.
    - b. Equipment Specifications. The OBD equipment shall conform to the requirements of "Performing Onboard Diagnostic System Checks as Part of a Vehicle Inspection and Maintenance Program," EPA420-R-01-015, EPA, June 2001 (and no future editions or amendments), which is incorporated by reference. A copy of this incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
    - c. OBD scan tools shall have the most recent available software downloaded and installed before inspection.
    - d. Test Rejection. A vehicle shall be rejected from an OBD test if any of the following conditions occurs:
      - i. The number of unset readiness indicators, excluding continuous indicators, is three or more for a model year 1996-2000 vehicle, or two or more for a model year 2001 and newer vehicle;
      - ii. The data link connector cannot be located or is inaccessible;
      - iii. The data link connector is loose and the scan tool cannot be inserted into the connector;
      - iv. The data link connector has no voltage; or
      - v. The eVIN and monitors are mismatched.
    - e. Test Failure. A vehicle fails the OBD test if any of the following conditions occurs:
      - i. The vehicle's MIL does not illuminate when the ignition is on and the engine is off;
      - ii. The vehicle's MIL illuminates continuously or flashes with the engine running;
      - iii. The OBD system is not communicating;
      - iv. The vehicle's OBD system reports the MIL as commanded on;

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- v. The vehicle's OBD system data is inappropriate for the vehicle being tested; or
  - vi. The vehicle's OBD system data does not match the original equipment manufacturer (OEM) or a Department exempted OBD software configuration.
5. Transient Loaded and Evaporative System Pressure Test.
- a. Transient Loaded Test Procedure.
    - i. The transient loaded test shall consist of 147 seconds of mass emissions measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle.
    - ii. The driving cycle shall include the acceleration, deceleration, and idle operating modes described in Table 4.
    - iii. The 147-second sequence may be ended earlier using a fast-pass or fast-fail algorithm.
    - iv. A retest algorithm shall be used to determine if a test failure is due to insufficient vehicle preconditioning. As determined by the retest algorithm, an additional test may be performed on a failing vehicle.
    - v. The highest selectable drive gear shall be used for automatic transmissions and first gear shall be used for manual transmission acceleration from idle.
    - vi. Exhaust emissions concentrations in grams per mile for HC, CO, NO<sub>x</sub> and CO<sub>2</sub> shall be recorded continuously beginning with the first second.
    - vii. All testing and test equipment for the transient loaded emissions test shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference, except that the transient driving cycle in Table 4, the standards in Table 4, and the fast-pass, fast-fail retest algorithms described in subsection (C)(5)(a) shall be used. A copy of the incorporated material is on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
    - viii. In determining compliance under subsection (C)(5)(d) for a vehicle that operates on natural gas, HC emissions shall be multiplied by 0.19, when an analyzer with a flame ionization detector is used or 0.61, when an NDIR analyzer is used.
  - b. Evaporative System Pressure Test Procedure. The evaporative system pressure test shall consist of the following steps in sequence:
    - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck;
    - ii. Pressurize the system to 14 ± 0.5 inches of water without exceeding 26 inches of water system pressure; and
    - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for two minutes unless a failure is detected or a fast-pass determination is made as defined in EPA420-R-00-007, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
- c. Test Rejection. A vehicle shall be rejected from the transient loaded and evaporative system pressure test if it has an audible or visible exhaust leak during emissions testing, or if the vehicle displays unsafe behavior on the dynamometer during testing.
- d. Transient Loaded Test Failure. A vehicle fails the transient loaded test if emissions measured during the test exceed the Table 3 standard applicable to the model year and type of the vehicle being tested as follows:
  - i. The average emissions measured for the entire test exceed the "composite standard" for any pollutant; or
  - ii. The average emissions measured during seconds 65 through 146 exceed the "phase-2" standard for any pollutant.
- e. Evaporative System Pressure Test Failure. A vehicle fails the evaporative system pressure test if any of the following conditions occurs:
  - i. The evaporative system cannot maintain a system pressure above eight inches of water for two minutes after being pressurized to 14 ± 0.5 inches of water;
  - ii. The canister is missing or damaged; or
  - iii. The hose or electrical system is missing, routed incorrectly, or disconnected, according to the vehicle emissions control information label.
- f. Test Failure. A vehicle fails the transient loaded and evaporative system pressure test if it fails the test under either subsection R10-2-1006(C)(5)(d) or R10-2-1006(C)(5)(e).
6. Loaded Test.
- a. Loaded Cruise Test Procedure. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to the Table 1 of this Article.
  - b. Besides the Arizona specific dynamometer test schedule, loaded tests shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section III, amended as of July 1st, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - c. Loaded Test Equipment Specifications.
    - i. The equipment used in Area A state stations for loaded cruise and curb idle testing shall conform to "IM240 & Evap Technical Guidance," EPA420-R-00-007, EPA, April 2000, and no future editions or amendments, which is incorporated by reference in subsection (C)(5)(a)(vii) of this rule.
    - ii. The equipment used in Area B state stations and all Arizona fleet emission testing stations for the loaded test shall comply with 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - d. In determining whether a vehicle that operates on natural gas complies with the HC emissions standards in Table 2 of this Article, the results of the test shall be multiplied by 0.19, when an analyzer with a

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- flame ionization detector is used or 0.61, when an NDIR analyzer is used.
  - e. Test Rejection. A vehicle shall be rejected from a loaded cruise and curb idle test, if the CO<sub>2</sub> plus CO reading during the curb idle test is less than 6%.
  - f. Test Failure. A vehicle fails the loaded cruise and curb idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for loaded cruise mode or curb idle mode for the type and model year of the vehicle being tested.
7. Two Speed Idle Test
- a. All two speed idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section II, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
  - c. Test Failure. A vehicle fails the two speed idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
8. Idle Test
- a. All idle testing shall conform to the procedures listed at 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department, the Secretary of State, and is available online at <http://azdeq.gov/VECS/Rulemaking>.
  - b. All equipment used for two speed idle testing shall conform with the requirements of 40 CFR 51, Subpart S, Appendix B, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference and on file with the Department.
  - c. Test Failure. A vehicle fails the idle test if tailpipe emissions measured by the test exceed the applicable standards in Table 2 for the type and model year of the vehicle being tested.
9. Exhaust Sampling Requirements for Annual Tests on Non-Diesel Vehicles.
- a. All CO and HC emissions analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
  - b. A vehicle, other than a diesel-powered vehicle, shall be inspected with a gas analyzer capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
  - c. A vehicle with multiple exhaust pipes shall be inspected by collecting and averaging samples by one of the following methods:
    - i. Collecting separate samples from each exhaust pipe and use the average concentration to determine the test result;
    - ii. Using manifold exhaust probes to simultaneously sample approximately equal volumes from each exhaust pipe; or
    - iii. Using manifold exhaust pipe adapters to collect approximately equal volume samples from each exhaust pipe.
10. Snap Idle Test.
- a. Snap Idle Test Procedure.
    - i. The Department shall test the vehicle with a procedure that conforms to Society of Automotive Engineers Recommended Practice J1667, February 1996, incorporated by reference and on file with the Department, the Secretary of State and is available online at <http://azdeq.gov/VECS/Rulemaking>. This incorporation by reference contains no future editions or amendments.
    - ii. All testing and test equipment shall conform to the J1667 Recommended Practice.
    - iii. The procedure shall use the corrections for ambient test conditions in Appendix B of the J1667 Recommended Practice for all tests.
    - iv. To expedite testing throughput, the Department may implement rapid testing procedures.
    - v. The test results shall be reported as the percentage of smoke opacity.
  - b. Snap Idle Test Failure.
    - i. Except as provided in subsection (C)(10)(c), a vehicle fails the snap idle test if the opacity of emissions exceeds the level specified in the following table:
 

Model Year	Standard
1991 or later	40%
1990 or earlier	55%
    - ii. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40%, unless a correct, legible, emission control label replacement is attached to the vehicle within 30 days of the inspection.
  - c. Alternative Opacity Standard. The Director shall identify an alternative, less stringent opacity standard for an engine family if the conditions of either subsection (C)(10)(c)(i) or (C)(10)(c)(ii) are satisfied.
    - i. The engine family exhibits smoke opacity greater than the applicable standard in subsection (C)(10)(b)(i) when in good operating condition and adjusted to the manufacturer's specifications. If this condition is satisfied, the Director shall identify a technologically appropriate less stringent standard based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications.
    - ii. The engine family has been granted an exemption from a standard equivalent to the applicable standard in subsection (C)(10)(b)(i) based on the J1667 Recommended Practice by the executive officer of the California Air Resources Board (CARB). If this condition is satisfied, the Director shall allow the engine family to comply with any technologically appropriate less stringent standard identified by the executive officer of CARB.
    - iii. A demonstration under subsection (C)(10)(c)(i) shall be based on data from at least three vehicles. Data from official inspections under this

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- subsection (C)(10) showing that vehicles in the engine family meet the standard may be used to rebut the demonstration.
- iv. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
11. Loaded Opacity A Test.
    - a. Test Procedure.
      - i. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio that produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM.
      - ii. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until the loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position.
      - iii. If the vehicle has an automatic transmission and automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater.
      - iv. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
    - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
  12. Loaded Opacity B Test.
    - a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of 30 HP,  $\pm$  2 HP, while operated at 50 MPH.
    - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
  13. Loaded Opacity C Test.
    - a. Test Procedure. The vehicle shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
    - b. Test Failure. A vehicle fails the test if the opacity reading for a period of 10 consecutive seconds exceeds the applicable standard in R18-2-1030(B).
  14. Exhaust Sampling Requirements for Diesel Vehicles Tests other than the Snap Idle Test.
    - a. For a diesel-powered vehicle equipped with multiple exhaust pipes, separate measurements shall be made on each exhaust pipe. The reading taken from the exhaust pipe that has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
    - b. A vehicle shall be inspected with either a full-flow or sampling-type opacity meter. The opacity meter shall be a direct reading, continuous reading light extinction-type using a collimated light source and photo-electric cell, accurate to a value within  $\pm$  2% of full scale.
  15. Functional Gas Cap Test.
    - a. Test Procedure.
      - i. The vehicle shall undergo a functional test of the gas cap to determine cap leakage.
      - ii. A vehicle with a non-sealing gas cap shall be checked for the presence of a properly fitting gas cap.
    - b. Exemption. A vehicle with a vented fuel system is exempt from this subsection.
    - c. Exemption. A vehicle that is manufactured without a gas cap is exempt from this subsection.
    - d. Test Failure.
      - i. A vehicle fails the test if cap leakage exceeds 60 cubic centimeters of air per minute at a pressure of 30 inches of water gauge.
      - ii. Notwithstanding subsection 18-2-1006(C)(15)(d)(i), a vehicle does not fail the test if the failing cap is immediately replaced at the state station by a gas cap that satisfies the requirements of this subsection.
  16. Tampering Inspection.
    - a. The inspection shall be based on the original configuration of the vehicle as manufactured. The Department shall verify the applicable emissions system requirements shall be verified by the "Vehicle Emission Control Information" label. "Original configuration" for a foreign manufactured vehicle means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States.
    - b. The Department's tampering inspection shall consist of the following:
      - i. A visual inspection to determine the presence and proper installation of each required catalytic converter system or OEM equivalent;
      - ii. An examination to determine the presence of an operational injection system, if applicable;
      - iii. A visual inspection to determine the presence of an operational positive crankcase ventilation system or closed crankcase ventilation system, if applicable; and
      - iv. A visual inspection to determine the presence of an operational evaporative control system, if applicable.
  17. Visual Gas Cap Test. The visual gas cap test consists of the inspector's ocular verification that a gas cap is properly fitted to the vehicle.
  18. Testing Vehicles that Operate on More than One Fuel. A vehicle, other than a vehicle for which an OBD test is required, designed to operate on more than one fuel, shall be tested on the fuel in use when the vehicle is presented for inspection, except vehicles that operate on alternative fuel, as defined in A.R.S. § 1-215.
  19. Testing Vehicles that Operate on Alternative Fuels.
    - a. The inspector shall test vehicles that operate on an alternative fuel, as defined in A.R.S. § 1-215, other than a vehicle for which an OBD test is required, on each fuel that the vehicle is intended to operate on, using the appropriate emissions test procedure and standards for that vehicle.
    - b. The vehicle shall be operated for a minimum of 30 seconds after switching fuels and before testing begins. The vehicle shall be rejected for testing if it is not able to operate on each fuel that the vehicle is intended to operate on or if the vehicle operator cannot switch fuels.
    - c. A vehicle that operates exclusively on propane or natural gas, as defined in A.R.S. § 1-215, shall be

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exempt from the functional gas cap test in subsection 10-2-1006(C)(15) and the evaporative pressure system test in subsection 10-2-1006(C)(5)(b).

**Historical Note**

Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted effective January 13, 1976 (Supp. 76-1). Amended effective November 1, 1976 (Supp. 76-5). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Former Section R9-3-1006 repealed, new Section R9-3-1006 adopted as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1006 as amended effective February 20, 1980 repealed and a new Section R9-3-1006 adopted as an emergency effective January 2, 1981 now adopted and amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1006 renumbered as Section R18-2-1006 and subsections (A), (C) and (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2722, effective June 28, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1007. Evidence of Meeting State Inspection Requirements**

- A. A vehicle required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless the vehicle owner obtains a certificate of waiver under R18-2-1008.
- B. The MVD or its agent may use the MVD motor vehicles emissions database, if available, as evidence that a vehicle complies with the requirements of this Article.
- C. If the MVD motor vehicles emissions database is not available, the MVD or its agent shall accept any of the following documents identified in subsections (C)(1) to (C)(5), when complete, unaltered, and dated no more than 90 days before registration expiration date, as evidence that a vehicle complies with the requirements of this Article unless the MVD or its agent has reason to believe it is false. Documents accompanying a late registration may be dated subsequent to the registration expiration date:
  1. Certificate of compliance,
  2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under Title 28),
  3. Certificate of exemption,
  4. Director's certificate, or
  5. The upper section of the vehicle inspection report with "PASS" in the final results block.
- D. A complete certificate of inspection or government vehicle certificate of inspection dated within 12 months of registration for an annually tested vehicle and 24 months for a biennially tested vehicle shall be accepted by the MVD or its agent as evidence that a vehicle is in compliance with the requirements of this Article unless the MVD or its agent has reason to believe it is false.

- E. Documents listed in subsection (C) and originating in Area B are not acceptable for meeting the inspection requirements in Area A, unless the tests required in Area A and Area B for the vehicle under R18-2-1006 are identical.
- F. Government vehicles for which only weight fees are paid shall be registered without evidence of inspection.

**Historical Note**

Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1007 repealed, new Section R9-3-1007 adopted effective January 3, 1977 (Supp. 77-1). Amended effective February 20, 1980 (Supp. 80-1). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1007 renumbered without change as Section R18-2-1007 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1008. Procedure for Issuing Certificates of Waiver**

- A. Unless prohibited under subsection (D), a waiver inspector shall issue a certificate of waiver after reinspection at a state station to a vehicle that failed the emissions reinspection when the vehicle owner demonstrates any of the following conditions have been satisfied:
  1. The requirements of R18-2-1009 and R18-2-1010, to the extent applicable, have been satisfied;
  2. The vehicle owner has spent the maximum required repair cost on the maintenance and repair procedures required by R18-2-1010; or
  3. Any further repairs within the maximum required repair cost would not enable the vehicle to pass the required vehicle emissions inspection.
- B. The demonstration required by subsection (A) may consist of repair receipts, emissions test results, evidence of repairs performed, under hood verification, repair cost estimates, or similar evidence.
- C. A temporary certificate of waiver may be issued to a vehicle failing the tampering inspection if the vehicle owner provides to a waiver inspector a written statement from an automobile parts or repair business that an emission control device necessary to repair the tampering is not available and cannot be obtained from any usual source of supply, and if all requirements of R18-2-1008(A) have been met. All written statements are subject to verification for authenticity and accuracy by the waiver inspector. The Department may deny a temporary certificate of waiver if the state inspector has any reason to believe the written statement is false or a usual source of supply exists and the device necessary to repair the tampering is available. Certificates of waiver may be issued under this subsection for a specified period, not to exceed 90 days, that allows sufficient time for the procurement and installation of a proper emissions control device. A receipt or bill from a vehicle repair facility or automobile parts store shall be an acceptable proof of purchase. Before the end of the specified time period, the vehicle owner shall present to the waiver inspector proof of purchase and installation of the device. The Department shall track all issued temporary certificates of waiver and if no proof of purchase and installation is received before the end of the specified time period, the Department shall forward to the MVD an order to cancel the vehicle's registration.
- D. The Director shall not issue a waiver to a vehicle under any of the circumstances described in subsections (D)(1) through (4).

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1. The vehicle failed the emissions test due to the catalytic converter system. A vehicle fails the emissions test due to the catalytic converter system if:
    - a. The vehicle has a catalytic converter system that is missing or defeated;
    - b. The vehicle is equipped with an on-board diagnostic computer (OBD) with a malfunction indicator light (MIL), "check engine" or "service engine soon" light commanded on by the computer and containing diagnostic trouble codes indicating the catalytic converter must be replaced; or
    - c. A vehicle with a repair order or estimate paperwork provided the waiver technician at the time of waiver inspection shows that a diagnostic determination has been made by the mechanic that the catalytic converter must be replaced.
  2. The vehicle failed the emissions test with an HC, CO, NOx, or opacity emission level greater than two times the pass-fail standard in R18-2-1006.
  3. The same vehicle has previously received a certificate of waiver.
  4. The waiver request is based upon repair estimates and the waiver inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.
- E.** The fee for a certificate of waiver under this Section shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state for administering and enforcing the provisions of this Article for issuance of certificates of waiver under this Section. The fee shall be payable at the time the certificate of waiver is issued.
- F.** If a waiver inspector denies a certificate of waiver under this Section, the vehicle owner may request review of the denial by a state inspector.

**Historical Note**

Former Section R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 13, 1976 (Supp. 76-1).

Former R9-3-1008 repealed, new Section R9-3-1008 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1008 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) and added subsection (D) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1008 renumbered as Section R18-2-1008 and amended effective August 1, 1988 (Supp. 88-3).

Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1009. Tampering Repair Requirements**

- A.** When a vehicle fails the visual inspection for properly installed catalytic converters, the vehicle owner shall replace the converters with new or reconditioned OEM converters, or equivalent new aftermarket converters.
- B.** When a vehicle fails the visual inspection for the presence of an operational air injection system, the vehicle owner shall install a new, used, or reconditioned, operational air pump on the vehicle according to manufacturer specifications.

- C.** When a gasoline vehicle fails the visual inspection for the presence or malfunction of the positive crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- D.** When a diesel-powered vehicle fails the visual inspection for the presence or malfunction of the closed crankcase ventilation system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E.** When a vehicle fails the visual inspection for the presence or malfunction of the evaporative control system, the vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Repealed effective January 3, 1977 (Supp. 77-1). New Section R9-3-1009 adopted effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1009 renumbered without change as Section R18-2-1009 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair**

- A.** Vehicle maintenance and repairs under subsection (B) and the failure-specific maintenance and repair requirements of subsection (C) must be performed before reinspection of a vehicle that fails a tailpipe emissions or OBD test under R18-2-1006.
- B.** Vehicle maintenance and repairs on a non-diesel powered vehicle consists of the following procedures:
  1. Emissions Failure Diagnosis. For a computer-controlled vehicle, the on-board computer shall be accessed and any stored trouble codes recorded. For a model year 1996 or newer vehicle equipped with an OBD system, a compatible scan tool shall be used to access and record diagnostic trouble codes. The following instruments or equipment are required to complete a low emissions tune-up:
    - a. Tachometer, although for 1996 and later vehicles an OBD scanner can be used to monitor engine RPMs;
    - b. A compatible OBD scan tool, if appropriate;
    - c. Engine analyzer or oscilloscope; and
    - d. A HC/CO NDIR analyzer to make final A/F adjustments, if specified by the manufacturer.
  2. Adjustment. All adjustments shall be made according to the manufacturer's specifications and procedures. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature.
  3. Inspection of Air Cleaner, Choke, and Air Intake System. The vehicle owner shall repair or replace a dirty or plugged air cleaner, stuck choke, or restricted air intake system as required.
  4. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and the vehicle owner shall make adjustments, if necessary, according to manufacturer's specifications.
  5. Inspection of PCV System. The PCV system shall be checked to ensure that it is the type recommended by the manufacturer and is correctly operating. Free flow through the PCV system passages and hoses shall be ver-

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- ified. The vehicle owner shall repair or replace the system as required.
6. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. The vehicle owner shall repair or replace as required.
  7. Fuel Lines and System Components Inspection. A visual inspection for leaking fuel lines or system components shall be performed. The vehicle owner shall repair or replace any leaking lines or systems as required.
  8. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and the vehicle owner shall make adjustments according to manufacturer's specifications and procedures. If the vehicle is equipped with a fuel injection system or an alternate fuel (LPG or LNG), the manufacturer's recommended adjustment procedure shall be followed.
- C.** Failure-specific recommended repairs and maintenance. If the maximum required repair cost in subsection (F) or (G) is not exceeded after the diagnosis and vehicle maintenance and repairs described in subsection (B), then the following procedures apply:
1. CO failure.
    - a. If a vehicle fails CO only, the vehicle shall be checked for:
      - i. Proper canister purge system operation,
      - ii. High float setting,
      - iii. Leaky power valve, and
      - iv. Faulty or worn needles, seats, jets or improper jet size.
    - b. If applicable, the vehicle shall be checked for the following items:
      - i. Computer,
      - ii. Engine and computer sensors,
      - iii. Engine solenoids,
      - iv. Engine thermostats,
      - v. Engine switches,
      - vi. Coolant switches,
      - vii. Throttle body or port fuel injection system,
      - viii. Fuel injectors,
      - ix. Fuel line routing and integrity,
      - x. Air in fuel system including line and pump,
      - xi. Fuel return system,
      - xii. Injection pump,
      - xiii. Fuel injection timing,
      - xiv. Routing of vacuum hoses, and
      - xv. Electrical connections.
    - c. The items in subsections (C)(1)(a) and (b) shall be repaired or replaced as required.
  2. HC, or HC and CO failure.
    - a. If a vehicle fails HC, or HC and CO emissions, the vehicle shall be checked for:
      - i. Faulty spark plugs and faulty, open, crossed, or disconnected plug wires;
      - ii. Distributor module;
      - iii. Vacuum hose routing and electrical connections;
      - iv. Distributor component malfunctions including vacuum advance;
      - v. Faulty points or condenser;
      - vi. Distributor cap crossfire;
      - vii. Catalytic converter efficiency air supply;
      - viii. Vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
    - b. The vehicle owner shall repair or replace the items in subsection (C)(2)(a) as required.
  3. NOx failure.
    - a. If a vehicle fails for NOx emissions, the vehicle shall be checked for:
      - i. Removed, plugged, or malfunctioning EGR valve, exhaust gas ports, lines, and passages;
      - ii. EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable;
      - iii. Above normal engine operating temperature;
      - iv. Proper air management;
      - v. Lean A/F mixture;
      - vi. Catalytic converter efficiency; and
      - vii. Over-advanced off-idle timing.
    - b. The items in subsection (C)(3)(a) shall be repaired or replaced as required.
  4. OBD failure. If the vehicle fails the OBD test, the vehicle owner shall repair the items indicated on the vehicle emissions report as causing the failure. If the failure results from diagnostic trouble codes (DTCs) that caused the malfunction indicator lamp (MIL) to be illuminated, the vehicle owner shall repair or replace the components or systems causing the DTCs. After repair of a DTC failure, and before reinspection, the vehicle shall be operated under conditions recommended by the vehicle manufacturer for the OBD computer to evaluate the repaired system.
- D.** For Evaporative System Failures, the following procedures apply:
1. If a vehicle fails the evaporative system pressure test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
  2. If a vehicle fails a visual inspection of the evaporative system, the vehicle shall be checked for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, mis-routed or plugged hoses, and damaged or missing purge valves. The vehicle owner shall repair or replace the system with OEM or equivalent aftermarket parts.
- E.** If a vehicle fails the functional gas cap pressure test described in R18-2-1006, the vehicle owner shall replace the gas cap with one that meets the requirements of that subsection. If a vehicle designed with a vented system fails a visual inspection for the presence of a gas cap, the vehicle owner shall install a properly fitting gas cap on the vehicle.
- F.** The maximum required repair cost for a vehicle in Area A, not including cost to repair the vehicle for failing an evaporative system pressure test due to tampering, or other tampering repair cost, is:
1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$500; and
  2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$200;
    - b. Manufactured in the 1975 through 1979 model years: \$300; and
    - c. Manufactured in or after the 1980 model year: \$450.
  3. Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.

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- G.** The maximum required repair cost for vehicles in Area B, not including tampering repair cost, is:
1. For a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles: \$300; and
  2. For a vehicle that is not a diesel-powered vehicle with a GVWR greater than 26,000 pounds and is not a diesel-powered vehicle with tandem axles:
    - a. Manufactured in or before the 1974 model year: \$50;
    - b. Manufactured in the 1975 through 1979 model years: \$200; and
    - c. Manufactured in or after the 1980 model year: \$300.
  3. Subsection (G) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have the repair receipts available when requesting a certificate of waiver.
- H.** Before reinspection of a diesel vehicle that has failed an inspection, the vehicle owner shall comply with the following maintenance and repair requirements to the extent that the total cost of meeting the requirements does not exceed the maximum required repair cost in subsection (F) or (G):
1. Inspect for dirty or plugged air cleaner, or restricted air intake system. Repair or replace as required.
  2. Check fuel injection system timing according to manufacturer's specifications. Adjust as required.
  3. Check for fuel injector fouling, leaking, or mismatch. Repair or replace as required.
  4. Check fuel pump and A/F ratio control according to manufacturer's specifications. Adjust as required.
  5. If the vehicle fails the J1667 procedure, check smoke-limiting devices, if any, including the aneroid valve and puff limiter. Repair or replace as required.
- I.** The vehicle owner shall use any available warranty coverage for a vehicle to obtain needed repairs before an expenditure can be counted toward the cost limits in subsection (F) and (G). If the operator of a vehicle within the age and mileage coverage of section 207(b) of the Clean Air Act presents a written denial of warranty coverage from the manufacturer or authorized dealer, warranty coverage is not considered available under this subsection.
- Historical Note**
- Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1010 repealed, new Section R9-3-1010 adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended effective February 20, 1980 (Supp. 80-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1010 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1010 renumbered as Section R18-2-1010 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended effective October 15, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).
- R18-2-1011. Vehicle Inspection Report**
- A.** The Department shall provide a vehicle inspected at a state station with a uniquely numbered vehicle inspection report of a design approved by the Director that contains, at a minimum, the following information, as applicable to the tests required for the vehicle under R18-2-1006:
1. License plate number;
  2. Vehicle identification number;
  3. Model year of vehicle;
  4. Make of vehicle;
  5. Style of vehicle;
  6. Type of fuel;
  7. Odometer reading;
  8. Emissions standards for idle and loaded cruise modes, if applicable;
  9. Emissions measurements during idle and loaded cruise modes, if applicable;
  10. Opacity measurements and standards, if applicable;
  11. Emissions standards and measurements for the transient loaded test, and the evaporative system pressure test, if applicable;
  12. Results of OBD test including all diagnostic trouble codes that commanded the illumination of the malfunction indicator lamp;
  13. Tampering inspection results;
  14. Repair requirements;
  15. Final test results;
  16. Repairs performed;
  17. Cost of emissions-related repairs;
  18. Cost of tampering-related repairs;
  19. Name, address, and telephone number of the business or person making repairs;
  20. Signature and certification number of person certifying repairs;
  21. Date of inspection;
  22. Test results of the previous inspection if the inspection is a reinspection;
  23. Inspection station, lane locators; and
  24. Test number and time of test.
- B.** A vehicle failing the initial inspection shall receive the Department's approved inspection report supplement containing, at a minimum, the following:
1. Diagnostic and tampering information including acceptable replacement units, and
  2. Applicable maximum repair costs.
- C.** The inspection report shall include a section that may be used as a certificate of compliance for vehicles passing the inspection or as a certificate of waiver, if applicable. The section shall contain all of the following information:
1. License plate number,
  2. Vehicle identification number,
  3. Final results,
  4. Serial number of the inspection report,
  5. Date of inspection,
  6. Model year,
  7. Make,
  8. Date of initial inspection,
  9. Inspection fee, and
  10. Label as either a certificate of compliance or a certificate of waiver.
- D.** At the time of registration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division as evidence of meeting the requirements of this Article.

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**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1011 repealed, new Section R9-3-1011 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1011 as amended effective January 3, 1979, and as amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2).

Amended effective January 1, 1986 (Supp. 85-6).

Amended subsections (A) and (B) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1011 renumbered as Section R18-2-1011 and amended by removing subsection (E) effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1012. Inspection and Reinspections; Procedures and Fee**

- A.** The fees vehicle owners are required to pay for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full cost of the vehicle emissions inspection program including administration, implementation, and enforcement. Each fee is payable by the vehicle owner directly to the contractor at the time and place of inspection as specified in the contract, and deposited into an account established by the Department for administration of fees. The contractor will be compensated by the Department for services provided on a schedule and in a manner defined in the contract.
- B.** A vehicle failing the initial paid inspection or any subsequent paid inspection is entitled to one reinspection at no additional charge under the following conditions:
1. The vehicle is presented for inspection within 60 calendar days of the initial or any subsequent paid inspection.
  2. Emissions-related repairs or adjustments and any tampering repairs have been made.
  3. The vehicle is accompanied by the vehicle inspection report from the initial or subsequent inspection.
- C.** A vehicle failing the reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.
- D.** A state station emissions inspector shall not recommend repairs or repair facilities.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1012 repealed, new Section R9-3-1012 adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1012 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended subsections (A) and (D) effective November 9, 1982 (Supp. 82-6). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1012 renumbered as Section R18-2-1012 and amended effective August 1,

1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1013. Repealed****Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1). Former Section R9-3-1013 repealed, new Section R9-3-1013 adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1013 adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1013 renumbered as Section R18-2-1013 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1014. Repealed****Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**R18-2-1015. Repealed****Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Section repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**R18-2-1016. Licensing of Inspectors and Fleet Agents**

- A.** Emissions inspectors shall be licensed as follows:
1. To obtain a license as a vehicle emissions inspector, an applicant shall pass a written test with a score greater than or equal to 80%. After passing the written test, the applicant shall pass a separate practical examination.
    - a. Applications to become an emissions inspector may be obtained from the Department and an applicant must submit a completed application to the Department. The Department must deem an application administratively complete before an applicant will be allowed to sit for the written test. If the Department finds the application to be incomplete, the applicant shall be provided an opportunity to submit sufficient information to enable the Department to deem the application administratively complete.
    - b. The written test shall cover the following subjects:
      - i. The air pollution problem in Arizona, its causes and effects;
      - ii. The purpose, function, and goals of the vehicle inspection program;

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- iii. State vehicle inspection regulations and procedures;
  - iv. Technical details of the test procedures and rationale for their design;
  - v. Emission control device function, configuration, and inspection;
  - vi. Test equipment operation, calibration, and maintenance;
  - vii. Quality control procedures and their purpose;
  - viii. Public relations; and
  - ix. Safety and health issues related to the inspection process.
- c. After passing the written test, the inspector applicant shall pass a practical exam where the applicant shall demonstrate the ability to conduct a proper emissions inspection, including proper use of equipment and procedures, in accordance with the testing procedures in R18-2-1006(C). An inspector applicant shall pass a practical examination for each type of test the applicant intends to perform.
2. Licenses issued to vehicle emissions inspectors shall be renewed biannually, on or before the expiration date.
  3. An inspector whose license is expired or suspended shall not inspect vehicles.
  4. A vehicle emissions inspector shall submit an application for a renewal of the vehicle emissions inspector's license at least 90 days before the current license expiration date.
  5. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department.
  6. A vehicle emissions inspector shall notify the Department of any change in employment status no later than fourteen days after the change.
  7. The Department shall assign a single, unique, nontransferable inspector's number to each vehicle emissions inspector.
  8. If a licensed emissions inspector fails to demonstrate the ability to conduct a proper vehicle emissions inspection during any audit, the Department shall suspend the vehicle emissions inspector's license. The suspended emissions inspector shall pass a practical examination within 30 days after suspension or the inspector's license shall be revoked. An inspector's license may be reinstated once the inspector passes a written examination with a score of 80% or greater and demonstrates the ability to properly conduct a vehicle emissions test during a practical examination.
- B. Fleet Agents shall be licensed as follows:**
1. To obtain a license as a fleet agent, an applicant shall pass a written test with a score greater than or equal to 80%. A fleet agent is an individual associated with a fleet emissions testing permit who is ultimately responsible for making sure a fleet complies with the requirements of this Article. This license is separate and distinct from a fleet emissions inspector license.
    - a. Applications to become a fleet agent may be obtained from the Department. An application must be administratively complete and submitted in the manner required by the Department before an applicant will be allowed to sit for the written test.
    - b. The written test shall cover the following subjects:
      - i. The statutes and rules governing the operation and administration of a fleet emissions inspection station.
        - ii. The duties of a fleet agent.
        - iii. How to operate an account on the Department's web portal.
        - iv. Purchasing certificates of inspection.
  2. If a licensed fleet agent fails to assure that the agent's fleet complies with this Article, the agent's license shall be suspended. The suspended agent shall pass a written test within 30 days of suspension or such license shall be revoked.
  3. Licenses issued to fleet agents shall be renewed biannually, on or before the expiration date.
  4. A fleet represented by an agent that has a suspended license may not inspect vehicles.
  5. The Department may suspend, revoke, or refuse to renew a fleet agent's license if the licensee has violated any provision of A.R.S. Title 49, Chapter 3, Article 5, any provision of this Article, or fails to continue to demonstrate proficiency to the Department as required.
  6. A fleet agent shall notify the Department of any change in employment status within seven days of the change.
  7. The Department shall assign a single, unique, nontransferable agent's number to each fleet agent.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1016 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1016 renumbered as Section R18-2-1016 and subsection (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1017. Inspection of Government Vehicles**

- A. Government vehicles operated in Area A and Area B shall be inspected as follows:**
1. At a licensed fleet station operated by the government entity;
  2. At a state station upon payment of the fee; or
  3. At a state station upon payment of the contracted fee, either singly or in combination with other government fleet operators.
- B. A government vehicle, except a federally owned vehicle that is excluded from the definition of motor vehicle under 40 CFR 85.1703, shall be inspected according to this Article and shall have a government vehicle certificate of inspection (GVCOI) affixed to the vehicle if in compliance with state emissions requirements.**
1. The vehicle emissions inspector performing the inspection shall punch out the appropriate year and month on the GVCOI to designate the date of the vehicle's next annual or biennial inspection.
  2. If the vehicle emissions inspection is performed at a fleet station, the emissions inspector shall record administratively complete results of the inspection into the Department's web portal on the day of the inspection. The

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unique number on the GVCOI sticker must be entered along with the emissions testing results for the vehicle.

3. A government vehicle, with the exception of a motorcycle or an undercover law enforcement vehicle, shall have the GVCOI affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. If a vehicle does not have a rear window, the GVCOI shall be affixed to the lower left corner of the windshield as determined from the driver's position.
- C. The GVCOI shall be purchased from the Department's web portal.
  1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections.
  2. Only the Department may sell or otherwise transfer GVCOI.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).

Amended effective January 3, 1977 (Supp. 77-1).

Amended effective January 3, 1979 (Supp. 79-1).

Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1017 renumbered as Section R18-2-1017 and subsection (E) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1018. Certificate of Inspection**

- A. A fleet inspector shall submit and certify administratively complete certificates of inspection (COI) to the Department through the Department's web portal. A COI is used as evidence that the vehicle it is assigned to has passed the tests required by this Article and complies with the applicable state emissions standards for that vehicle. Inspection data may be electronically transmitted to MVD under A.R.S. § 49-542(Q).
- B. On the day a vehicle is inspected, a licensed vehicle emissions inspector shall enter an administratively complete record of the inspection into the Department's web portal.
- C. A certificate of inspection issued to a fleet vehicle is valid for a period of 180 days unless the vehicle is reregistered with a new owner.
- D. The following individuals are authorized to purchase certificates of inspection as long as the fleet they are associated with meets the requirements of this article:
  1. A fleet agent who is licensed by the Department under R18-2-1016;
  2. A responsible corporate officer; or
  3. A designated responsible officer.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).

Amended effective January 3, 1977 (Supp. 77-1).

Amended effective March 2, 1978 (Supp. 78-2).

Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1018 renumbered as Section R18-2-1018 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000

(Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1019. Fleet Station Procedures and Permits**

- A. A fleet emissions testing station applicant or permittee shall create and manage an account on the Department's web portal.
- B. To obtain a fleet emissions inspection station permit, an applicant shall:
  1. Be a registered owner or lessee of a fleet of at least 25 nonexempt vehicles.
    - a. A motor vehicle dealer's business inventory of vehicles held for resale over the previous 12 months shall be used to determine compliance with this subsection.
    - b. A motor vehicle dealer with less than 12 months of operations that applies for a fleet emissions testing permit shall certify that it intends to test at least 25 vehicles per year.
  2. Be located within Area A, within 50 miles of the border of Area A, or within Area B. A dealer outside these areas who certifies to the Department that customers who reside in Area A are the primary source of the dealer's business may also apply for a fleet permit.
  3. Maintain a facility that has space devoted principally to maintaining or repairing the fleet's motor vehicles.
    - a. The space shall be large enough to conduct maintenance or repair of at least one motor vehicle.
    - b. Any fleet station shall be exclusively rented, leased, or owned by the applicant.
  4. Own or lease the machinery, tools, and equipment required for the specific tests the applicant wishes to perform. Equipment and testing requirements are listed in R18-2-1006(C).
  5. Employ the following personnel:
    - a. At least one fleet agent licensed pursuant to R18-2-1016.
    - b. At least one emissions inspector licensed pursuant to R18-2-1016.
    - c. At least one person who is able to perform necessary emissions related repairs for fleet vehicles.
    - d. A single person may fill two or more of these roles for a fleet.
  6. Provide data to the Department as required by this Section.
  7. Pass an initial inspection to determine compliance with this Section.
  8. Submit to the ongoing inspections and audits prescribed in this Article.
- C. A fleet emissions inspection testing permittee shall continuously comply with all requirements of this Article.
- D. The equipment used at a fleet emissions inspection station is subject to the following requirements:
  1. A fleet emissions testing station applicant or permittee shall own or lease the equipment referenced in R18-2-1006 that is necessary for the specific type of testing that the permittee is licensed to perform.
  2. All testing equipment and instruments shall be maintained in accurate working condition as required by the manufacturer. An instrument requiring periodic calibration shall be calibrated according to instruction and recommendations of the instrument or equipment manufacturer. Calibration records shall be submitted through the web portal for review by the Department. The calibration records shall be certified by the technician performing each calibration.

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- a. Fleet station analyzers shall comply with, be calibrated, and be quality control checked according to 40 CFR 51, Subpart S, Appendix A, Section I, amended as of July 1, 2017, and no future editions or amendments, which is incorporated by reference in (C)(7)(b) and on file with the Department.
- b. A fleet station opacity meter used for emission inspections is required to read the equivalent opacity value of neutral density filter within +/- 5% opacity at any point in the range of meter.
3. Calibration gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
4. Fleet testing equipment shall be subject to both scheduled and unscheduled audits by state inspectors.
5. A fleet's analyzer shall be calibrated at least monthly with calibration gases approved by the Department. A registered opacity meter shall be calibrated according to manufacturer's specifications before performing the first vehicle emissions inspection in any month.
- E. For every test performed by a vehicle emissions inspector, that vehicle emissions inspector shall log into the Department's web portal the same day that the inspection takes place to report the results of the test to the Department.
- F. A fleet's activities shall be governed by the following compliance and enforcement rules:
  1. All requirements in this Article apply at all times after a fleet emissions testing license has been issued.
  2. The Director may suspend or revoke a fleet emissions testing license according to A.R.S. § 49-546(F) and A.R.S. Title 41, Chapter 6, if the permittee, or any person employed by the permittee:
    - a. Violates any provisions of A.R.S. Title 49, Chapter 3, Article 5 or any provision of this Article;
    - b. Misrepresents a material fact in obtaining a permit;
    - c. Fails to make, keep, and submit to the Department records for a vehicle tested; or
    - d. Does not provide a state inspector access to the information required in this Article.
  3. If a fleet emissions inspection permit is surrendered, suspended or revoked, all unused certificates of inspection shall be refunded.
  4. Any fleet vehicle is subject to inspection by a state inspector.
- G. A fleet emissions inspection station permit is non-transferable and does not expire.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective February 20, 1980 (Supp. 80-1).  
 Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1019 as amended effective February 20, 1980, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1019 renumbered as Section R18-2-1019 and amended effective August 1, 1988 (Supp. 88-3).  
 Amended effective September 19, 1990 (Supp. 90-3).  
 Amended effective February 4, 1993 (Supp. 93-1).  
 Amended effective November 14, 1994 (Supp. 94-4).  
 Amended effective October 15, 1998 (Supp. 98-4).

Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1020. Department Issuance of Alternative Fuel Certificates**

Issuing Alternative Fuel Certificates. The Department shall inspect a vehicle converted to run on alternative fuel and issue an alternative fuel certificate according to A.R.S. § 28-2416(2)(b) if the vehicle is currently powered by an alternative fuel.

**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1021. Reserved****R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties**

A vehicle emissions station manager employed by an official emissions inspection station may issue a Director's certificate for a vehicle that cannot be inspected as required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
 Amended effective January 3, 1977 (Supp. 77-1).  
 Amended effective March 2, 1978 (Supp. 78-2).  
 Amended effective January 3, 1979 (Supp. 79-1).  
 Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1022 renumbered without change as Section R18-2-1022 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

**R18-2-1023. Certificate of Exemption for Out-of-State Vehicles**

- A. If a vehicle being registered in Area A or Area B requires an emission test and will not be physically available for inspection within the state during the 90-day period before the emissions compliance expiration date, the owner or owner's agent may submit an application to the Department for a certificate of exemption.
- B. The owner or owner's agent shall apply for a certificate of exemption in the manner and form required by the Department.
- C. The Department may issue a certificate of exemption:
  1. For a vehicle that will not be located in the state during the 90-day period before the emissions compliance expiration date and is located in an area where emissions testing is not available. This exemption shall only be granted if an affidavit confirming the location of the vehicle is signed and submitted with the application.
  2. For a vehicle that has passed an official emissions inspection in another state during the 90 days before emissions compliance expiration upon submission of the inspection compliance document issued by the entity conducting the inspection program.
- D. The fee for a certificate of exemption shall be fixed by the Director according to A.R.S. § 49-543 and shall be based upon the Director's estimated costs to the state of administering and

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enforcing the provisions of this Article as they apply to issuance of certificates of exemption. The payment for the certificates shall be included with the application for certificates.

**Historical Note**

Adopted effective January 13, 1976 (Supp. 76-1).  
Amended effective January 3, 1977 (Supp. 77-1).  
Amended effective January 3, 1979 (Supp. 79-1).  
Amended as an emergency effective January 2, 1981 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1023 as amended effective January 3, 1979 and amended as an emergency effective January 2, 1981 now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Former Section R9-3-1023 renumbered without change as Section R18-2-1023 (Supp. 88-3). Amended effective February 4, 1993 (Supp. 93-1). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1024. Expired****Historical Note**

New Section made by final rulemaking at 8 A.A.R. 84, effective December 14, 2001 (Supp. 01-4). Section expired under A.R.S. § 41-1056(E) at 15 A.A.R. 1128, effective April 30, 2008 (Supp. 09-2).

**R18-2-1025. Inspection of Contractor's Equipment and Personnel**

- A.** State inspectors shall conduct performance audits to determine whether a state station is correctly performing all inspection and functions related to inspections as follows:
1. Overt audits shall be completed at least two times each year for each inspection lane. Overt audits shall include:
    - a. A check for the observance of appropriate document security;
    - b. A check to see that required recordkeeping practices are being followed;
    - c. A check for licenses, certificates, and other required display information;
    - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
    - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
  2. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked under R18-2-1016(A)(4).
  3. Vehicle emissions inspection records shall be reviewed at least monthly to assess station performance and identify any problems, potential fraud, or incompetence.
  4. Covert audits may be performed as necessary to confirm compliance with this article.
- B.** If an equipment audit indicates that equipment is not calibrated and accurate, the equipment shall not be used to conduct emissions testing until it is replaced or repaired.
- C.** Equipment that is removed from testing may be returned to service upon its repair and a state inspector's verification of a passing calibration audit.
- D.** A state inspector shall inspect on-road emissions analyzers at least monthly.

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1).  
Amended effective March 2, 1978 (Supp. 78-2).  
Amended as an emergency effective January 2, 1981,

pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1025 as amended effective March 2, 1978, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (A) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1025 renumbered as Section R18-2-1025 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1026. Inspection of Fleet Stations**

- A.** Equipment used to perform emissions testing shall meet the requirements for the type of testing a fleet station is licensed to perform.
- B.** A fleet station's gas analyzer shall not be used for an official emissions inspection if:
1. The calibration gases are not read within the following tolerances:
    - a. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO; and
    - b. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE.
  2. The calibration gases are not read within the manufacturer specified tolerances;
  3. There is a leak in the sampling systems or the calibration port; or
  4. The sample handling system is restricted.
- C.** The fleet emissions testing station shall acquire and utilize calibration gases with assigned HC and CO concentrations to calibrate fleet emission analyzers.
- D.** A state inspector shall fail a fleet emissions analyzer if the analyzer does not meet the requirements of this Section. A fleet emission inspector shall not use the analyzer for inspection until the analyzer is cleared for return to service by a state inspector.
- E.** A state inspector shall conduct performance audits to determine whether a fleet emissions inspection station is correctly performing inspections and functions related to inspections as follows:
1. Overt audits at least two times each year that include:
    - a. A check for the observance of appropriate document security;
    - b. A check to see that required recordkeeping practices are being followed;
    - c. A check for licenses, certificates, and other required display information;
    - d. An observation and evaluation of each vehicle emissions inspector's ability to perform an inspection; and
    - e. A check to ensure all emissions testing equipment is calibrated and operating correctly.
  2. Fleet station and vehicle emissions inspector records shall be reviewed at least monthly to assess fleet performance and identify any problems, potential fraud, or incompetence.
  3. If a vehicle emissions inspector fails an audit, the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4).

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- 4. Covert audits may be performed as necessary to confirm compliance with this Article.

January 14, 2000 (Supp. 00-1).

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (J) and added subsection (K) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1026 renumbered as Section R18-2-1026 and subsections (B), (F), (G) and (H) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1027. Repealed**

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Amended effective March 2, 1978 (Supp. 78-2). Amended effective January 3, 1979 (Supp. 79-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1027 as amended effective January 3, 1979, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1027 renumbered as Section R18-2-1027 and subsections (B), (D), (F) and (G) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4). Amended by final rulemaking at 14 A.A.R. 2834, effective July 1, 2008 (Supp. 08-3). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1028. Repealed**

**Historical Note**

Adopted effective January 1, 1986 (Supp. 85-6). Amended subsections (A) and (F) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1028 renumbered as Section R18-2-1028 and subsection (D) amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**R18-2-1029. Vehicle Emission Control Devices**

For the purposes of A.R.S. §§ 28-955 and 49-447, a registered motor vehicle shall have in operating condition all emission control devices installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent after-market replacement parts or devices.

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Former Section R9-3-1029 renumbered as Section R18-2-1029 and amended effective August 1, 1988 (Supp. 88-3). Amended by final rulemaking at 6 A.A.R. 562, effective

**R18-2-1030. Visible Emissions; Mobile Sources**

- A. A vehicle other than a diesel-powered vehicle or 2-stroke vehicle that emits any visible emissions for 10 consecutive seconds or more is “excessive” for the purposes of A.R.S. § 28-955(C).
- B. A diesel-powered vehicle shall not emit any visible emissions in excess of:
  1. Twenty percent visual opacity for 10 consecutive seconds or more at or below 2,000 feet elevation;
  2. Thirty percent visual opacity for 10 consecutive seconds or more above 2,000 feet and at or below 4,000 feet elevation; and
  3. Forty percent visual opacity for 10 consecutive seconds above 4,000 feet elevation.
- C. A vehicle that exceeds the standards in subsection (B) fails the inspection under R18-2-1006 and is considered to have “excessive” emissions under A.R.S. § 28-955(C).

**Historical Note**

Adopted effective January 3, 1977 (Supp. 77-1). Amended as an emergency effective January 2, 1981, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 81-1). Former Section R9-3-1030 as adopted effective January 3, 1977, and amended as an emergency effective January 2, 1981, now amended effective April 15, 1981 (Supp. 81-2). Amended effective January 1, 1986 (Supp. 85-6). Amended subsection (C) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1030 renumbered as Section R18-2-1030 and subsection (C) amended effective August 1, 1988 (Supp. 88-3). Amended effective September 19, 1990 (Supp. 90-3). Amended by final rulemaking at 6 A.A.R. 562, effective January 14, 2000 (Supp. 00-1).

**R18-2-1031. Repealed**

**Historical Note**

Adopted effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Former Section R9-3-1031 renumbered as Section R18-2-1031 and amended effective August 1, 1988 (Supp. 88-3). Amended effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Repealed by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**Table 1. Dynamometer Loading Table - Annual Tests**

Gross Vehicle Weight			
Rating (Pounds)	Engine Size	Speed (MPH)	Load (HP)
8500 or less	4 cyl. or less	22-25	2.8-4.1
8500 or less	5 or 6 cyl.	29-32	6.4-8.4
8500 or less	8 cyl. or more	32-35	8.4-10.8
8501 or more	All	37-40	12.7-15.8

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4).

**Table 2. Emissions Standards - Annual Tests**

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MAXIMUM ALLOWABLE

Motorcycles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	N/A	N/A
4-Stroke	All	All	500	5.00	1,800	5.50	N/A	N/A

Reconstructed Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
4-Stroke	1967-1980	All	700	5.25	1,200	7.50	1,200	5.60
4-Stroke	1980 & Newer	All	700	5.25	1,200	7.50	700	5.25

Light-Duty Vehicles

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 1 (0-6000 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	4 or less	120	1.00	250	2.20	250	1.65
4-Stroke	1975-1978	more than 4	120	1.00	250	2.00	250	1.50
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

Light-Duty Truck 2 (6001 - 8500 lbs GVWR)

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75

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4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979	4 or less	120	1.00	220	2.20	220	1.65
4-Stroke	1979	more than 4	120	1.00	220	2.00	220	1.50
4-Stroke	1980 & newer	All	100	0.50	220	1.20	220	1.20

**Heavy-Duty Truck (8501 lbs or greater GVWR)**

Vehicle Engine Type	Vehicle Model Year	Number of Cylinders	Conditioning Mode		Curb Idle Mode Test		Loaded Cruise Mode Test	
			HC PPM	CO %	HC PPM	CO %	HC PPM	CO %
2-Stroke	All	All	18,000	5.00	18,000	5.00	18,000	5.00
4-Stroke	1967-1971	4 or less	450	3.75	500	5.50	500	4.20
4-Stroke	1967-1971	more than 4	380	3.00	450	5.00	450	3.75
4-Stroke	1972-1974	4 or less	380	3.50	400	5.50	400	4.20
4-Stroke	1972-1974	more than 4	300	3.00	400	5.00	400	3.75
4-Stroke	1975-1978	All	300	3.00	350	4.00	350	3.00
4-Stroke	1979 & newer	All	300	3.00	300	4.00	300	3.00

**Historical Note**

Renumbered from R18-2-1006 and amended effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2). Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3). Amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**Table 3. Emissions Standards - Transient Loaded Emissions Tests**  
FINAL STANDARDS (Standards are in grams per mile)

(i) Light Duty Vehicles

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1982	3.0	2.5	25.0	21.8	3.5	3.4
1983-1985	2.4	2.0	20.0	17.3	3.5	3.4
1986-1989	1.6	1.4	15.0	12.8	2.5	2.4
1990-1993	1.0	0.8	12.0	10.1	2.5	2.4
1994+	0.8	0.7	12.0	10.1	2.0	1.9

(ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.0	3.4	40.0	35.3	5.5	5.4
1986-1989	3.0	2.5	25.0	21.8	4.5	4.4
1990-1993	2.0	1.7	20.0	17.3	4.0	3.9
1994+	1.6	1.4	20.0	17.3	3.0	2.9

(iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

Model Years	Hydrocarbons		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1981-1985	4.4	3.7	48.0	42.5	7.0	6.9
1986-1987	4.0	3.4	40.0	35.3	5.5	5.4
1988-1989	3.0	2.5	25.0	21.8	5.5	5.4
1990-1993	3.0	2.5	25.0	21.8	5.0	4.9
1994+	2.4	2.0	25.0	21.8	4.0	3.9

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**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4). Table heading amended by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**Table 4. Transient Driving Cycle**

Time second	Speed mph								
0	0	30	20.7	60	26	90	51.5	120	54.9
1	0	31	21.7	61	26	91	52.2	121	55.4
2	0	32	22.4	62	25.7	92	53.2	122	55.6
3	0	33	22.5	63	26.1	93	54.1	123	56
4	0	34	22.1	64	26.5	94	54.6	124	56
5	3.3	35	21.5	65	27.3	95	54.9	125	55.8
6	6.6	36	20.9	66	30.5	96	55	126	55.2
7	9.9	37	20.4	67	33.5	97	54.9	127	54.5
8	13.2	38	19.8	68	36.2	98	54.6	128	53.6
9	16.5	39	17	69	37.3	99	54.6	129	52.5
10	19.8	40	17.1	70	39.3	100	54.8	130	51.5
11	22.2	41	15.8	71	40.5	101	55.1	131	50.8
12	24.3	42	15.8	72	42.1	102	55.5	132	48
13	25.8	43	17.7	73	43.5	103	55.7	133	44.5
14	26.4	44	19.8	74	45.1	104	56.1	134	41
15	25.7	45	21.6	75	46	105	56.3	135	37.5
16	25.1	46	22.2	76	46.8	106	56.6	136	34
17	24.7	47	24.5	77	47.5	107	56.7	137	30.5
18	25.2	48	24.7	78	47.5	108	56.7	138	27
19	25.4	49	24.8	79	47.3	109	56.3	139	23.5
20	27.2	50	24.7	80	47.2	110	56	140	20
21	26.5	51	24.6	81	47.2	111	55	141	16.5
22	24	52	24.6	82	47.4	112	53.4	142	13
23	22.7	53	25.1	83	47.9	113	51.6	143	9.5
24	19.4	54	25.6	84	48.5	114	51.8	144	6
25	17.7	55	25.7	85	49.1	115	52.1	145	2.5
26	17.2	56	25.4	86	49.5	116	52.5	146	0
27	18.1	57	24.9	87	50	117	53		
28	18.6	58	25	88	50.6	118	53.5		
29	20	59	25.4	89	51	119	54		

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4).

**Table 5. Tolerances**

	Range	State Station	Fleet Station
4 & 2 stroke vehicles: CO in MOL percent	0 to 2.0% 2 to 10.0%	±0.1% ±0.25%	±0.25% ±0.5%
4-stroke vehicles: HC as N-hexane in PPM	0 to 500 PPM 500 to 2000 PPM	±15 PPM ±50 PPM	±30 PPM ±100 PPM
2-stroke vehicles: HC as propane in PPM	0 to 25,000 PPM	±1250 PPM	±1250 PPM

**Historical Note**

Adopted effective November 14, 1994 (Supp. 94-4). Amended by final rulemaking at 25 A.A.R. 485, effective June 1, 2019 (Supp. 19-1).

**Table 6. Repealed**

**Historical Note**  
Adopted effective November 14, 1994 (Supp. 94-4). See emergency amendment below (Supp. 94-4). Emergency

amendment adopted effective December 23, 1994, pursuant to A.R.S. § 41-1026, valid for 180 days (Supp. 95-2).  
Emergency amendment expired, previous text placed back into effect effective June 21, 1995 (Supp. 95-3).

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Amended by final rulemaking at 6 A.A.R. 382, effective December 20, 1999 (Supp. 99-4), Table 6 repealed by final rulemaking at 8 A.A.R. 90, effective January 1, 2002 (Supp. 01-4).

**ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS****R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)**

A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov, Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart B - Radon Emissions from Underground Uranium Mines.
3. Subpart C - Beryllium.
4. Subpart D - Beryllium Rocket Motor Firing.
5. Subpart E - Mercury.
6. Subpart F - Vinyl Chloride.
7. Subpart H - Radionuclides Other Than Radon from Department of Energy Facilities.
8. Subpart I - Radionuclide Emissions from Federal Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.
9. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
10. Subpart K - Radionuclide Emissions From Elemental Phosphorus Plants.
11. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
12. Subpart M - Asbestos.
13. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
14. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
15. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
16. Subpart Q - Radon Emissions from Department of Energy Facilities.
17. Subpart R - Radon Emissions from Phosphogypsum Stacks.
18. Subpart T - Radon Emissions from the Disposal of Uranium Mill Tailings.
19. Subpart V - Equipment Leaks (Fugitive Emission Sources).
20. Subpart W - Radon Emissions from Operating Mill Tailings.
21. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
22. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
23. Subpart FF - Benzene Waste Operations.

B. Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of June 30, 2017, and no future editions or amendments, are incorporated by reference as applicable requirements. These standards are on file with the Department and shall be applied by the Department. These standards can be obtained from the U.S. Government Printing Office, Superintendent of Documents, bookstore.gpo.gov,

Mail Stop: SSOP IDCC-SSOM, Washington, D.C. 20402-9328.

1. Subpart A - General Provisions.
2. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
3. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
4. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
5. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
6. Subpart J - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production.
7. Subpart L - National Emission Standards for Coke Oven Batteries.
8. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
9. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
10. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
11. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
12. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
13. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.
14. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
15. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
16. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
17. Subpart Y - National Emission Standards for Marine Tank Vessel Loading Operations.
18. Subpart AA - National Emission Standards for Hazardous Air Pollutants From Phosphoric Acid Manufacturing Plants.
19. Subpart BB - National Emission Standards for Hazardous Air Pollutants From Phosphate Fertilizers Production Plants.
20. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
21. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
22. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
23. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
24. Subpart HH - National Emission Standards for Hazardous Air Pollutants From Oil and Natural Gas Production Facilities.
25. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
26. Subpart KK - National Emission Standards for the Printing and Publishing Industry.

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27. Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
28. Subpart MM - National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfit, and Stand-Alone Semi-chemical Pulp Mills.
29. Subpart OO - National Emission Standards for Tanks - Level 1.
30. Subpart PP - National Emission Standards for Containers.
31. Subpart QQ - National Emission Standards for Surface Impoundments.
32. Subpart RR - National Emission Standards for Individual Drain Systems.
33. Subpart SS - National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.
34. Subpart TT - National Emission Standards for Equipment Leaks - Control Level 1.
35. Subpart UU - National Emission Standards for Equipment Leaks - Control Level 2 Standards.
36. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
37. Subpart WW - National Emission Standards for Storage Vessels (Tanks) - Control Level 2.
38. Subpart XX - National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations.
39. Subpart YY - National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic Maximum Achievable Control Technology Standards.
40. Subpart CCC - National Emission Standards for Hazardous Air Pollutants for Steel Pickling - HCl Process Facilities and Hydrochloric Acid Regeneration Plants.
41. Subpart DDD - National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.
42. Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
43. Subpart GGG - National Emission Standards for Pharmaceuticals Production.
44. Subpart HHH - National Emission Standards for Hazardous Air Pollutants From Natural Gas Transmission and Storage Facilities.
45. Subpart III - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.
46. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.
47. Subpart LLL - National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry.
48. Subpart MMM - National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.
49. Subpart NNN - National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.
50. Subpart OOO - National Emission Standards for Hazardous Air Pollutant Emissions: Manufacture of Amino/Phenolic Resins.
51. Subpart PPP - National Emission Standards for Hazardous Air Pollutant Emissions for Polyether Polyols Production.
52. Subpart QQQ - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting.
53. Subpart RRR - National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.
54. Subpart TTT - National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.
55. Subpart UUU - National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.
56. Subpart VVV - National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.
57. Subpart XXX - National Emission Standards for Hazardous Air Pollutants for Ferroalloys Production: Ferromanganese and Silicomanganese.
58. Subpart AAAA - National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills.
59. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants: Manufacture of Nutritional Yeast.
60. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants: Plywood and Composite Wood Products.
61. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants: Organic Liquids Distribution (Non-Gasoline).
62. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing.
63. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production.
64. Subpart HHHH - National Emissions Standards for Hazardous Air Pollutants for Wet-Formed Fiberglass Mat Production.
65. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Automobiles and Light-Duty Trucks.
66. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants: Paper and Other Web Coating.
67. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Cans.
68. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Miscellaneous Metal Parts and Products.
69. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Large Appliances.
70. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants: Printing, Coating, and Dyeing of Fabrics and Other Textiles.
71. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Surface Coating of Plastic Parts and Products.
72. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products.
73. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Furniture.
74. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants: Surface Coating of Metal Coil.
75. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Leather Finishing Operations.
76. Subpart UUUU - National Emission Standards for Hazardous Air Pollutants for Cellulose Products Manufacturing.
77. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Boat Manufacturing.

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78. Subpart WWWW - National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production.
79. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants: Rubber Tire Manufacturing.
80. Subpart YYYY - National Emission Standards for Hazardous Air Pollutants for Stationary Combustion Turbines.
81. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Stationary Reciprocating Internal Combustion Engines.
82. Subpart AAAAA - National Emission Standards for Hazardous Air Pollutants for Lime Manufacturing Plants.
83. Subpart BBBB - National Emission Standards for Hazardous Air Pollutants for Semiconductor Manufacturing.
84. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks.
85. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters.
86. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries.
87. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants: Integrated Iron and Steel Manufacturing.
88. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants: Site Remediation.
89. Subpart HHHH - National Emission Standards for Hazardous Air Pollutants: Miscellaneous Coating Manufacturing.
90. Subpart IIII - National Emission Standards for Hazardous Air Pollutants: Mercury Emissions From Mercury Cell Chlor-Alkali Plants.
91. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants for Brick and Structural Clay Products Manufacturing.
92. Subpart KKKK - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing.
93. Subpart LLLL - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing.
94. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations.
95. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production.
96. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands.
97. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities.
98. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants: Taconite Iron Ore Processing.
99. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing.
100. Subpart TTTT - National Emissions Standards for Hazardous Air Pollutants for Primary Magnesium Refining.
101. Subpart WWWW - National Emission Standards for Hospital Ethylene Oxide Sterilizers.
102. Subpart YYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Electric Arc Furnace Steelmaking Facilities.
103. Subpart ZZZZ - National Emission Standards for Hazardous Air Pollutants for Iron and Steel Foundries Area Sources.
104. Subpart BBBB - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities.
105. Subpart CCCC - National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Dispensing Facilities.
106. Subpart DDDD - National Emission Standards for Hazardous Air Pollutants for Polyvinyl Chloride and Copolymers Production Area Sources.
107. Subpart EEEE - National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelting Area Sources.
108. Subpart FFFF - National Emission Standards for Hazardous Air Pollutants for Secondary Copper Smelting Area Sources.
109. Subpart GGGG - National Emission Standards for Hazardous Air Pollutants for Primary Nonferrous Metals Area Sources-Zinc, Cadmium, and Beryllium.
110. Subpart HHHH - National Emission Standards for Hazardous Air Pollutants: Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources.
111. Subpart JJJJ - National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers Area Sources.
112. Subpart LLLL - National Emission Standards for Hazardous Air Pollutants for Acrylic and Modacrylic Fibers Production Area Sources.
113. Subpart MMMM - National Emission Standards for Hazardous Air Pollutants for Carbon Black Production Area Sources.
114. Subpart NNNN - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources: Chromium Compounds.
115. Subpart OOOO - National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production and Fabrication Area Sources.
116. Subpart PPPP - National Emission Standards for Hazardous Air Pollutants for Lead Acid Battery Manufacturing Area Sources.
117. Subpart QQQQ - National Emission Standards for Hazardous Air Pollutants for Wood Preserving Area Sources.
118. Subpart RRRR - National Emission Standards for Hazardous Air Pollutants for Clay Ceramics Manufacturing Area Sources.
119. Subpart SSSS - National Emission Standards for Hazardous Air Pollutants for Glass Manufacturing Area Sources.
120. Subpart TTTT - National Emission Standards for Hazardous Air Pollutants for Secondary Nonferrous Metals Processing Area Sources.
121. Subpart VVVV - National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources.
122. Subpart WWWW - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Plating and Polishing Operations.
123. Subpart XXXX - National Emission Standards for Hazardous Air Pollutants Area Source Standards for Nine Metal Fabrication and Finishing Source Categories.

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124. Subpart YYYYYY - National Emission Standards for Hazardous Air Pollutants for Area Sources: Ferroalloys Production Facilities.
125. Subpart ZZZZZZ - National Emission Standards for Hazardous Air Pollutants: Area Source Standards for Aluminum, Copper, and other Nonferrous Foundries.
126. Subpart AAAAAA - National Emission Standards for Hazardous Air Pollutants for Area Sources: Asphalt Processing and Asphalt Roofing Manufacturing.
127. Subpart BBBBBB - National Emission Standards for Hazardous Air Pollutants for Area Sources: Chemical Preparations Industry.
128. Subpart CCCCCC - National Emission Standards for Hazardous Air Pollutants for Area Sources: Paints and Allied Products Manufacturing.
129. Subpart DDDDDD - National Emission Standards for Hazardous Air Pollutants for Area Sources: Prepared Feeds Manufacturing.
130. Subpart EEEEEEE - National Emission Standards for Hazardous Air Pollutants: Gold Mine Ore Processing and Production Area Source Category.
131. Subpart HHHHHHH - National Emission Standards for Hazardous Air Pollutant Emissions for Polyvinyl Chloride and Copolymers Production.

**Historical Note**

Former Section R18-2-1101 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1101 renumbered from R18-2-901 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 5504, effective February 4, 2006 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 23 A.A.R. 1564, effective May 2, 2018 (Supp. 18-2).

**R18-2-1102. General Provisions**

- A. When used in 40 CFR 61 or 63, "Administrator" means the Director of the Arizona Department of Environmental Quality except that the Director shall not be authorized to approve alternate or equivalent test methods or alternate standards or work practices, except as specifically provided in Part 63, Subpart B.
- B. From the general standards identified in R18-2-1101(A), delete 40 CFR 61.04. All requests, reports, applications, submittals, and other communications to the Director pursuant to this Article shall be submitted to the Arizona Department of Environmental Quality, Air Quality Division, 1110 West Washington Street, Phoenix, Arizona 85007.
- C. The Director shall not be delegated authority to deal with equivalency determinations that are nontransferable through Section 112(h)(3) of the Act.

**Historical Note**

Former Section R18-2-1102 repealed effective September 26, 1990 (Supp. 90-3). New Section R18-2-1102 renumbered from R18-2-902 and amended effective November 15, 1993 (Supp. 93-4). Amended effective June 10, 1994 (Supp. 94-2). Amended effective February 17, 1995 (Supp. 95-1). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4).

**ARTICLE 12. VOLUNTARY EMISSIONS BANK****R18-2-1201. Definitions**

In addition to the definitions contained in Article 1 of this Chapter, and A.R.S. § 49-401.01, the following definitions apply to this Article:

"Account holder" means any person or entity who has opened an account in the emissions bank under R18-2-1206.

"Certification authority" means the Department or the county or multi-county district to which the Department has delegated authority to certify emission reduction credits under A.R.S. § 49-410(C).

"Certified credit" means an emission reduction credit that has been issued under R18-2-1203(C)(2), R18-2-1204(B), or R18-2-1205(E)(3).

"Conditional credit" means an emission reduction credit for a reduction in emissions by a plan generator that the certification authority has issued under R18-2-1205(D)(2) but the Administrator has not yet approved under R18-2-1205(E)(3).

"Emissions bank" means the system created by the Department to record and make publicly available information on the issuance, certification, transfer, retirement, and use of emission reduction credits.

"Emission reduction credit" or "credit" means a reduction in qualifying emissions expressed in tons per year for which the generator has submitted an application under R18-2-1203, R18-2-1204, or R18-2-1205 and which has not been withdrawn from the emissions bank under R18-2-1208(B)(5) or (C).

"Emission reduction plan" means a plan submitted under R18-2-1205 for assuring that reductions in qualifying emissions by a plan generator are permanent, quantifiable, surplus, enforceable, and real.

"Enforceable" means that specific measures for assessing compliance with an emissions limitation, control, or other requirement are established in a permit, offset-creation rule, or emission reduction plan in a manner that allows compliance to be readily determined by an inspection of records and reports.

"Form" means a paper document or online form provided through a web portal.

"Generator" means any permitted source or other activity that has made or proposes to make reductions in qualifying emissions.

"Issue," with respect to emission reduction credits, means to create and provide evidence of the creation of conditional credits or certified credits in the form or manner prescribed by the Department.

"Offset-creation rule" means a state, county, or multi-county district rule that has been approved into the state implementation plan and provides a method for allowing emission reductions from specific activities to qualify as offsets. Rule 242 of the Maricopa County Air Pollution Control Regulations is an example of an offset-creation rule.

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December 1, 1988 (Supp. 88-4). Repealed effective November 15, 1993 (Supp. 93-4). New Appendix 2 adopted effective December 7, 1995 (Supp. 95-4). Amended effective May 9, 1996 (Supp. 96-2). Amended effective April 4, 1997; filed with the Office of the Secretary of State March 14, 1997 (Supp. 97-1). Amended effective December 4, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 3221, effective August 12, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 4170, effective October 11, 2000 (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2543, effective May 24, 2002 (Supp. 02-2). Amended by final rulemaking at 10 A.A.R. 3281, effective September 27, 2004 (Supp. 04-3). Amended by final rulemaking at 11 A.A.R. 3305, effective October 3, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 4199, effective January 5, 2008 (Supp. 07-4). Amended by exempt rulemaking pursuant to Laws 2011, Ch. 214, § 4, at 21 A.A.R. 1156, effective July 2, 2015 (Supp. 15-3). Amended by final expedited rulemaking at 21 A.A.R. 2747, effective December 13, 2015 (Supp. 15-4). Amended by final expedited rulemaking at 23 A.A.R. 1564, effective May 2, 2018 (Supp. 18-2).

**Appendix 3. Logging**

1. Each log entry required by a change under R18-2-317.02(B) shall include at least the following information:
  - a. A description of the change, including:
    - i. A description of any process change.
    - ii. A description of any equipment change, including both old and new equipment descriptions, model numbers and serial numbers, or any other unique equipment number.
    - iii. A description of any process material change.
  - b. The date and time that the change occurred.
  - c. The provision of R18-2-317.02(B) that authorizes the change to be made with logging.
  - d. The date the entry was made and the first and last name of the person making the entry.
2. Logs shall be kept for five years from the date created. Logging shall be performed in indelible ink in a bound log book with sequentially numbered pages, or in any other form, including electronic format, approved by the Director.

**Historical Note**

Appendix 3 adopted by final rulemaking at 5 A.A.R. 4074, effective September 22, 1999 (Supp. 99-3).

**Appendix 4. Reserved****Appendix 5. Repealed****Historical Note**

Appendix 5 repealed effective November 15, 1993 (Supp. 93-4).

**Appendix 6. Repealed****Historical Note**

Adopted effective August 7, 1975 (Supp. 75-1). Former Appendix 6 repealed, new Appendix 6 adopted effective July 7, 1978 (Supp. 78-4). Former Appendix 6 repealed effective May 14, 1979 (Supp. 79-1).

**Appendix 7. Repealed****Historical Note**

Adopted effective December 22, 1976 (Supp. 76-5). For-

mer Appendix 7 repealed, new Appendix 7 adopted effective January 8, 1980 (Supp. 80-1). Editorial correction, Instructions for Schedule 2, paragraph (15) (Supp. 80-2). Repealed effective September 26, 1990 (Supp. 90-3).

**A8. Appendix 8. Procedures for Utilizing the Sulfur Balance Method for Determining Sulfur Emissions****PROCEDURES FOR UTILIZING THE SULFUR BALANCE METHOD FOR DETERMINING SULFUR EMISSIONS****A8.1. Calculating Input Sulfur**

Total sulfur input is the sum of the product of the weight of each sulfur bearing material introduced into the smelting process as calculated in A8.1.1. multiplied by the fraction of sulfur contained in that material as calculated in A8.1.2. plus the amount of sulfur contained in fuel utilized in the smelting process as calculated in A8.1.3.

**A8.1.1. Material Weight**

The owner or operator of a copper smelter shall weigh all sulfur-bearing materials, other than fuels, introduced into the smelting process. The weighing shall be subject to the following conditions:

A8.1.1.1. Weight shall be determined on a belt scale, rail or truck scales, or other weighing device.

A8.1.1.2. Weight shall be determined within an accuracy of  $\pm 5\%$ .

A8.1.1.3. All devices or scales used for weighing shall be calibrated to manufacturer's specifications at least once a month.

A8.1.1.4. Sulfur-bearing materials subject to being weighed include concentrate, cement copper, reverts that are discarded and not part of the internal circulating load and precipitates. Materials such as limestone and silica flux that are mixed with a charge of sulfur bearing materials shall be weighed and reported by the owner or operator.

**A8.1.2. Sulfur Content**

The owner or operator shall calculate the sulfur content of all sulfur-bearing materials introduced into the smelting process using the following steps or an alternative method approved according to A8.4.1.

**A8.1.2.1. Sampling**

The procedures followed by the owner or operator in sampling are dependent upon the input vehicles for the sulfur-bearing material.

**A8.1.2.1.1. Beltfeed**

The smelter owner or operator shall collect a five-pound sample each hour. The owner or operator shall combine hourly samples for a total daily sample.

**A8.1.2.1.2. Railcar**

The smelter owner or operator shall collect a 24-pound sample from each car by the auger method at a minimum of four locations. The owner or operator shall combine each car sample with all other car samples for a total lot sample.

**A8.1.2.1.3. Truck**

The owner or operator shall collect a 12-pound sample from each truck load. The owner or operator shall take samples at two locations during unloading. If more than one truck delivers a single lot, the samples from each truck shall be combined for a total lot sample.

**A8.1.2.2. Sample Preparation**

The owner or operator shall prepare each total sample for analysis in the following manner:

A8.1.2.2.1. The sample shall be crushed to minus  $\frac{1}{4}$  inch particles.

A8.1.2.2.2. 2000 gm of the sample shall be split out using a Jones Riffle Splitter or similar device.

A8.1.2.2.3. The 2000 gm sample shall be pulverized to minus 150 mesh.

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- A8.1.2.2.4. The pulverized mass shall be mixed using a rolling cloth.
- A8.1.2.2.5. 500 gm shall be split out for sample analysis.
- A8.1.2.3. Sample Analysis
- A8.1.2.3.1. The owner or operator shall analyze the sample to determine sulfur content using the Barium Sulfate (BaSO<sub>4</sub>) Gravimetric Method according to A8.4.3. The analysis shall be accurate to within  $\pm 1\%$ .
- A8.1.2.3.2. For purposes of comparison, the owner or operator shall analyze the sample for copper content using the Potassium Iodide (KI) Titration Method according to A8.4.3. The analysis shall be accurate to within  $\pm 1\%$ .
- A8.1.3. Fuel Sulfur Content  
The owner or operator shall calculate sulfur in fuels by multiplying the amount of fuel that enters the process by the fraction of sulfur in the fuel, as reported to the smelter operator by the fuel's supplier. The sulfur content determination shall be accurate to within  $\pm 5\%$ .
- A8.2. Calculating Removed Sulfur  
Total removed sulfur is the sum of the removed sulfur in each of the following products as determined by each process set forth below, or by other processes approved according to A8.4.1.
- A8.2.1. Furnace and Converter Slags
- A8.2.1.1. The owner or operator shall determine the weight of each slag using a scale with an accuracy within  $\pm 5\%$ .
- A8.2.1.2. The owner or operator shall collect a five-pound sample from each slag pot during tapping operations.
- A8.2.1.3. The owner or operator shall prepare the sample and determine the amount of sulfur and copper using the procedures specified in A8.1.2.2. and A8.1.2.3.
- A8.2.2. Dust Collection Equipment Dusts
- A8.2.2.1. After the owner or operator collects the dust and places it in a rail car or truck they shall weigh it using a scale with an accuracy within  $\pm 5\%$ .
- A8.2.2.2. The owner or operator shall sample the dust and prepare and analyze a sample for sulfur and copper using the procedures specified in A8.1.2.1., A8.1.2.2., and A8.1.2.3.
- A8.2.3. Strong Acids
- A8.2.3.1. The owner or operator shall take an inventory of strong acids daily by means of a manometer or sight glass, and increase the inventory by the amounts of acid shipped or otherwise transferred during that day.
- A8.2.3.2. The owner or operator shall ensure the daily inventory will be accurate to within  $\pm 5\%$ .
- A8.2.3.3. The owner or operator shall take a sample of each batch of the inventoried acid and analyze the sample for sulfur, according to the procedures in A8.1.2.3.
- A8.2.4. Weak Acids
- A8.2.4.1. The owner or operator shall determine the amount of weak acid discharged from an acid plant and scrubber systems by a time volumetric method of measurement in gallons per minute and to an accuracy of within  $\pm 20\%$ .
- A8.2.4.2. The owner or operator shall analyze a 500 ml sample of the weak acid daily for sulfur content according to the procedures in A8.1.2.3.
- A8.2.5. Sulfur in Copper Production
- A8.2.5.1. The owner or operator shall determine the weight of copper produced by weight of copper cast to an accuracy of within  $\pm 5\%$ .
- A8.2.5.2. The owner or operator shall record the weight and number of castings.
- A8.2.5.3. The owner or operator shall obtain a sample of the copper, either by the grab sample method while casting, or by the use of at least three drill holes on a representative casting from each charge.
- A8.2.5.4. The owner or operator shall obtain at least one sample from each charge.
- A8.2.5.5. The owner or operator shall analyze each sample for sulfur content using the Barium Sulfate (BaSO<sub>4</sub>) Gravimetric Method according to A8.4.3. The analysis shall be accurate to within  $\pm 50\%$ .
- A8.2.6. Materials in Process
- A8.2.6.1. The owner or operator shall determine the total tonnage of materials in process by physical inventory on the first or last day of each month.
- A8.2.6.2. The owner or operator shall calculate a monthly change in in-process inventory for each material in process by taking the difference between the inventory from each material in process on the first or last day of the preceding month and multiplying that difference by the monthly composite sulfur assay for that material.
- A8.2.6.3. The change in monthly in-process inventory shall be accurate to within  $\pm 50\%$ .
- A8.3. Sulfur Dioxide Emissions Monitoring
- A8.3.1. The sulfur dioxide emissions monitoring and recording system required under R18-2-715.01(K) through R18-2-715.01(N) shall meet the following specifications:
- A8.3.1.1. The monitoring system shall be capable of continuously monitoring sulfur dioxide emissions with an accuracy of within  $\pm 20\%$  and a confidence level of 95%.
- A8.3.1.2. The owner or operator shall operate and calibrate the sulfur dioxide emission monitoring and recording equipment according to manufacturer's specifications for the equipment except that calibration shall be done at least once every 24 hours.
- A8.3.2. The sulfur removal equipment bypass monitoring required under R18-2-715.01(Q) shall consist of a detector and recorder system capable of producing a permanent record of all periods that the bypass is in operation.
- A8.4. General Provisions
- A8.4.1. For purposes of this Appendix, an approved alternative method, process, or procedure, must be approved in writing by the Director and the U.S. Environmental Protection Agency.
- A8.4.2. The processes and procedures specified in this Appendix shall be available for inspection, review and verification by the Department at all reasonable times.
- A8.4.3. The barium sulfate gravimetric test method and potassium iodide titration test method provided in *Standard Methods of Chemical Analysis*, Volume One, *The Elements*, Sixth Edition, N. Howell Furman (ed.), D. Van Nostrand Company, Inc., Princeton, New Jersey, 1962, pages 410-411, 1006-1011, and 1342-1343 (and no future editions or amendments) is incorporated by reference and available at the Department.

**Historical Note**

Adopted effective December 22, 1976 (Supp. 76-5). Correction, Appendix 8, A8-2-1.1 (Supp. 77-2). Amended effective May 28, 1982 (Supp. 82-3). Amended effective November 15, 1993 (Supp. 93-4). Amended by final rulemaking at 11 A.A.R. 2216, effective July 18, 2005 (Supp. 05-2).

**A9. Appendix 9. Monitoring Requirements****MONITORING REQUIREMENTS**

- A9.1. Unless otherwise approved by the Director or specified in applicable Sections, the requirements of this Appendix shall apply to all continuous monitoring systems required under applicable Sections.
- A9.2. All continuous monitoring systems and monitoring devices shall be installed and operational prior to conducting

#### 49-104. Powers and duties of the department and director

##### A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. 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.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

- (b) The availability of other funds for the duties performed.
- (c) The impact of the fees on the parties subject to the fees.
- (d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

- (a) The fees established by the department under the dredge and fill permit program.
- (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-425. Rules; hearing

A. The director shall adopt such rules as he determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify, and amend reasonable standards for the quality of, and emissions into, the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions, and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after twenty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge upon request.

**INDUSTRIAL COMMISSION**

Title 20, Chapter 5, Article 8, Occupational Safety and Health of Rules of Procedure Before the Commission



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 14, 2020

**SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA**  
Title 20, Chapter 5, Article 8 - Occupational Safety and Health of Rules of Procedure Before the Commission

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### **Summary**

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to rules in Title 20, Chapter 5, Article 8, regarding Occupational Safety and Health of Rules of Procedure Before the Commission.

In the previous 5YRR the Commission outlined proposed amendments to the rules that sought to clarify and update some of the language in the rules. The Commission indicates the proposed changes were minor and non-substantive in nature and were not completed because of the rulemaking moratorium and staffing issues.

### **Proposed Action**

The Commission is proposing to seek approval from the Occupational Safety and Health Administration (OSHA) related to the proposed changes and will commence a rulemaking process to make the changes outlined in the Report. The Commission anticipates completing this rulemaking before January 31, 2021 if it receives an exemption from the Governor's Rulemaking Moratorium Order.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Commission cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

Article 8 establishes the right to a hearing, the right to review, and basic procedures for cases involving a disputed occupational safety and health citation, penalty, and/or abatement period. The Commission indicates that there is no prior economic analysis for comparison. They go on to state that the rules have no adverse impact on either small business or consumers.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Commission believes that the probable benefits of the rules outweigh the probable costs. In addition, the Commission goes on to state that the rules impose the least burden and costs on the regulated community.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Commission indicates that it has not received any written criticisms of the rules within the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Commission states that the rules under review are clear, concise, understandable, except for the following rules, for the reasons stated in the report:

- R20-5-803 (Definitions);
- R20-5-805 (Record Address);
- R20-5-807 (Consolidation);
- R20-5-808 (Severance);
- R20-5-809 (Election to Appear);
- R20-5-810 (Employee Representatives);
- R20-5-811 (Form of Pleadings);
- R20-5-814 (Pre-hearing Conference);
- R20-5-815 (Payment of Witness Fees and Mileage);
- R20-5-817 (Failure to Appear -- Withdrawal of Request for Hearing);
- R20-5-818 (Duties and Powers of Hearing Officers);
- R20-5-819 (Witnesses' Oral Deposition; In State);
- R20-5-820 (Witnesses' Oral Deposition; Out-of-State);
- R20-5-821 (Parties' Disposition upon Written Interrogatories);
- R20-5-822 (Refusal to Answer; Refusal to Attend);

- R20-5-824 (Intermediary Rulings or Orders by the Hearing Officer);
- R20-5-825 (Legal Memoranda);
- R20-5-826 (Decisions of Hearing Officers);
- R20-5-827 (Settlement); and
- R20-5-828 (Special Circumstances; Waiver of Rules).

The Commission indicates the rules under review are consistent with other rules and statutes, except for rules R20-5-801, R20-5-805, R20-5-6(F), R20-5-809(B), R20-5-811(D), R20-5-813(C), R20-5-818, R20-5-826(B), and R20-5-827(C). The Commission indicates these rules do not reflect a 2016 statutory transition of adjudicative responsibilities that transferred contested matters (except variance hearings) from the Commission to the Arizona Office of Administrative Hearings, which was codified in A.R.S. §§ 407(6), 23-418.01(C), and 23-420(C).

The Commission indicates the rules under review are effective in achieving their respective objectives.

**5. Has the agency analyzed the current enforcement status of the rules?**

The Commission indicates the rules are enforced as written, except that hearings are handled by the Arizona Office of Administrative Hearings instead of the Commission pursuant to A.R.S. §§ 407(6), 23-418.01(C), and 23-420(C).

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

The Commission indicates the rules in Article 8 are not more stringent than corresponding federal law.

**7. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

There have been no rules adopted after July 29, 2010, in Article 8 which require the issuance of a permit or license.

**Conclusion**

As mentioned above, the Commission is planning to amend the rules to improve its overall effectiveness, clarity, understandability, and consistency with other rules and statutes. The Commission plans to complete a rulemaking by January 31, 2021. Council staff recommends approval of this report.

THE INDUSTRIAL COMMISSION OF ARIZONA  
OFFICE OF THE DIRECTOR



DALE L. SCHULTZ, CHAIRMAN  
JOSEPH M. HENNELLY, JR., VICE CHAIR  
SCOTT P. LEMARR, MEMBER  
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070  
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR  
PHONE: (602) 542-4411  
FAX: (602) 542-7889

May 22, 2020

Sent via e-mail to [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 8, Five-year Review Report

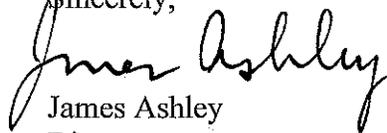
Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 8. The Commission has timely filed this report on or before Friday, May 29, 2020, after receiving a 120-day extension from the Council.

An electronic copy of this cover letter, the Report, the rules being reviewed, and the general and specific statutes authorizing the rules, are concurrently submitted by e-mail to Krishna Jhaveri. The Commission believes that the Report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 8, and, with this letter, I certify that the Commission is in compliance with A.R.S. § 41-1091. Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602)-542-5905.

Sincerely,

  
James Ashley  
Director

Enclosures

**FIVE-YEAR REVIEW REPORT**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF  
PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

**FIVE -YEAR REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF**  
**PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

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4.	RULES REVIEWED.....	Attached
5.	ENABLING AND RELATED STATUTES .....	Attached

## **5-YEAR REVIEW SUMMARY**

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers, which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

### **Certification Regarding Compliance with A.R.S. § 41-1091**

In the cover letter for this report, the Commission’s Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 8, as well as other substantive policy statements and all rules, which are available on the Commission’s website.

### **About Article 8**

A.R.S. §§ 23-420 & 23-423 establish the right to a hearing, the right to review, and basic procedures for cases involving a disputed occupational safety and health citation, penalty, and/or abatement period issued under A.R.S. §§ 23-415 , 23-417, or 23-418.01. Pursuant to A.R.S. § 23-405(4), the Commission is authorized to “promulgate [] rules and regulations as are necessary for the efficient functioning of the division.” Article 8 establishes rules of procedures for occupational safety and health hearings before an Administrative Law Judge or before the Commission (in the case of a variance hearing).

**FIVE-YEAR REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF**  
**PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

**1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

The rules in Article 8 have general and specific authority in A.R.S. §§ 23-107 and 23-405(4). A.R.S. § 23-107(A)(1) generally provides that the Commission “has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1].” A.R.S. §23-405(4) specifically provides that the Commission has authority to “promulgate such other rules and regulations as are necessary for the efficient functioning of the division.” *See also* A.R.S. § 23-420(F) (referencing rules of procedure adopted by ADOSH under A.R.S. § 23-405(4)).

**2. Objective of the rules, including the purposes for the existence of the rules.**

The overarching objective of Article 8 is to establish rules of procedure for cases involving a disputed occupational safety and health citation, penalty, and/or abatement period issued under A.R.S. §§ 23-415 , 23-417, or 23-418.01.

R20-5-801. Notice of Rules

This rule defines the scope of application of the rules of procedure found in Article 8.

R20-5-802. Location of Office and Office Hours

This rule informs the public of the location and hours of operation of the offices of the Commission.

R20-5-803. Definitions

This rule defines seven terms used in Article 8.

R20-5-804. Computation of Time

This rule outlines how periods of time prescribed in Article 8 are to be calculated.

R20-5-805. Record Address

This rule sets forth the requirement to include a name, address and telephone number in an initial pleading, and the requirement to notify the Commission and all other parties of a change in such information. This rule additionally sets forth the consequences associated with failing to keep the Commission and all other parties notified of a change.

R20-5-806. Service and Notice

This rule sets forth the service and notice requirements for filings, and the service, notice, and posting requirements for a Notice of Hearing.

R20-5-807. Consolidation

This rule allows for consolidation of cases in which there are common questions of law or fact.

R20-5-808. Severance

This rule allows issues and parties to be severed in a proceeding.

R20-5-809. Election to Appear

This rule advises affected employees of their right to appear at the hearing and procedures for providing notice of intent to appear.

R20-5-810. Employee Representatives

This rule allows for authorized employee representatives and outlines the authority that is given to such representatives.

R20-5-811. Form of Pleadings

This rule advises parties of the requirements for pleadings filed with the Commission.

R20-5-812. Caption; Titles of Cases

This rule advises the parties of the caption requirements for pleadings.

R20-5-813. Requests for Hearing

This rule describes the requirements for the filing of a request for hearing.

R20-5-814. Pre-hearing Conference

This rule provides for the scheduling of prehearing conferences to facilitate the exchange of information, simplify issues, or expedite the hearing process.

R20-5-815. Payment of Witness Fees and Mileage

This rule allows for compensation for witnesses “summoned” by the administrative law judge for their time and travel to the hearing, to be borne by the party requesting the witness.

R20-5-816. Expired

R20-5-817. Failure to Appear – Withdrawal of Request for Hearing

This rule advises parties of the consequences of failing to appear at a scheduled hearing and the consequences of the withdrawal of their request for hearing.

R20-5-818. Duties and Powers of Hearing Officers

This rule advises parties of the duties and powers of the administrative law judge presiding over contested matters and defines the parameters of the judge’s authority.

R20-5-819. Witnesses’ Oral Deposition: In State

This rule describes the procedures for the taking of depositions of persons residing in the State of Arizona.

R20-5-820. Witnesses’ Oral Deposition: Out-of-State

This rule describes the procedures for the taking of depositions of persons residing outside the State of Arizona.

R20-5-821. Parties’ Disposition upon Written Interrogatories

This rule describes the procedural and substantive requirements for the use of written interrogatories.

R20-5-822. Refusal to Answer; Refusal to Attend

This rule describes the procedure for compelling parties to cooperate with discovery and describes the consequences of refusing to cooperate when ordered by an administrative law judge.

R20-5-823. Burden of Proof

This rule describes with whom the burden of proof lies with regard to contested matters.

R20-5-824. Intermediary Rulings or Orders by the Hearing Officer

This rule advises the parties that rulings or orders issued by an administrative law judge prior to a final disposition of a case cannot be immediately appealed to the Review Board but shall become a part of the record.

R20-5-825. Legal Memorandum

This rule permits the filing of legal memoranda to fully advise an administrative law judge of the factual and legal arguments raised by the parties.

R20-5-826. Decisions of Hearing Officers

This rule describes the form and substantive requirements of decisions issued by administrative law judges.

R20-5-827. Settlement

This rule describes the parameters and requirements of settlement agreements.

R20-5-828. Special Circumstances; Waiver of Rules

This rule authorizes the administrative law judge to waive any rule or enter such orders as justice requires.

R20-5-829. Variances

This rule describes one component of the variance process and advises that hearings regarding variances shall be before the Commission.

**3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.**

The rules reviewed are effective in achieving their respective objectives. This determination is based on the Commission's experience using the rules and the 37 cases referred to the Office of Administrative Hearings for hearing in fiscal year 2019.

**4. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Except as noted below, the rules are consistent with state and federal statutes and rules, including A.R.S. §§ 23-401 through 23-433. Except as noted below, the Commission is not aware of any other conflicting or duplicative statutes or rules.

- In 2016, contested matters (except variance hearings) were transferred from the Industrial Commission to the Arizona Office of Administrative Hearings (“OAH”). This change was codified in A.R.S. §§ 407(6), 23-418.01(C), and 23-420(C). As a result, the title to Article 8, R20-5-801, R20-5-805, R20-5-806(F), R20-5-809(B), R20-5-811(D), R20-5-813(C), R20-5-818, R20-5-826(B), and R20-5-827(C) need to be updated to reflect the statutory transition of adjudicative responsibilities.

**5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement.**

The rules reviewed are enforced as written, except that hearings are handled by the Arizona Office of Administrative Hearings pursuant to A.R.S. §§ 407(6), 23-418.01(C), and 23-420(C).

**6. Clarity, conciseness, and understandability of the rules.**

Except as noted below, the rules in Article 8 are clear, concise, and understandable.

- R20-5-803(2) & (4), R20-5-805, R20-5-811(C), R20-5-814(A), R20-5-818, R20-5-820(A) & (B), R20-5-822(B), and R20-5-828 need to be amended to remove gender-specific pronouns.
- R20-5-807 (hearing officer); R20-5-808 (hearing officer); R20-5-809(B) (hearing officer); R20-5-814 (hearing officer); R20-5-815 (hearing officer); R20-5-817 (hearing officer); R20-5-818 (Title and rule - hearing

officers); R20-5-819 (hearing officer); R20-5-820 (hearing officer); R20-5-822 (hearing officer); R20-5-824 (Title and rule - hearing officer); R20-5-825 (hearing officer); R20-5-826 (Title and rule – hearing officer); R20-5-827 (hearing officer and chief hearing officer); and R20-5-828 (hearing officer) all contain outdated terms.

- R20-5-810(D) needs to fix a spelling error (effected).
- R20-5-811(B) needs to be modernized.
- R20-5-820(A) needs the addition of R20-5-819 before the reference to subsections (A), (D), (E), and (F).
- R20-5-820(D), R20-5-821(A), and R20-5-822(A) need to be amended to eliminate outdated and unnecessary practices.
- R20-5-826 needs clarification as to the jurisdictional responsibilities of the Commission and the Office of Administrative Hearings.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.**

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules.**

There is no prior economic analysis available for comparison; however, the rules have no adverse economic impact on either small business or consumers.

9. **Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

No business competitiveness analysis has been submitted to the Commission regarding Article 8.

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.**

The previous Five-Year-Review Report outlined proposed amendments to the rules that sought to clarify and update some of the language in the rules. The proposed changes were minor and non-substantive in nature. Because of staffing issues and subsequent moratoriums on rulemaking, the proposed amendments have not yet been completed.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.**

The probable benefits of the rules in Article 8 outweigh the probable costs. In addition, the Commission believes that the rules impose the least burden and costs on regulated community.

12. **A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The rules in Article 8 implement the procedures for occupational safety and health hearings and are not more stringent than corresponding federal law. [The corresponding federal law can be found at 29 CFR § 2200.01 et seq.](#)

**13. For rules adopted after July 29, 2010, that require issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

There have been no rules adopted after July 29, 2010, in Article 8 which require the issuance of a regulatory permit, license, or agency authorization.

**14. Proposed course of action**

The Commission will seek approval from the Occupational Safety and Health Administration (OSHA) related to the proposed changes and will commence a rulemaking process to complete all amendments discussed in Sections 4 and 6, above. The Commission anticipates completing this rulemaking before January 31, ~~the end of calendar year 2021~~. The anticipated rulemaking is contingent upon receiving an exemption from the Governor's Rulemaking Moratorium Order.

# **RULES REVIEWED**

## **ARTICLE 8. OCCUPATIONAL SAFETY AND HEALTH RULES OF PROCEDURE BEFORE THE INDUSTRIAL COMMISSION OF ARIZONA**

### **R20-5-801. Notice of Rules**

Sections R20-5-801 et seq. apply to all actions and proceedings of or before the Commission and Review Board pertaining to those issues arising out of Title 23, Chapter 2, Article 10.

### **R20-5-802. Location of Office and Office Hours**

The main office of the Industrial Commission of Arizona is located in Phoenix, Arizona. An office is also located in Tucson, Arizona. The offices are open for the transaction of business from 8:00 a.m. until 5:00 p.m. every day except Saturdays, Sundays and legal holidays.

### **R20-5-803. Definitions**

In these Rules of Procedures, unless the context otherwise requires, the following words and terms shall have the following meanings:

1. "Commission" means the Industrial Commission of Arizona.
2. "Affected employee" means an employee of a cited employer who is exposed to the alleged hazard described in the citation, as a result of his assigned duties.
3. "Authorized employee representative" means a labor organization which has a collective bargaining relationship with the cited employer and which represents affected employees.
4. "Representative" means any person, including an authorized employee representative, authorized by a party to represent him in a proceeding.
5. "Citation" means a written communication issued by the Division of Occupational Safety and Health of the Industrial Commission of Arizona pursuant to A.R.S. § 23-415.
6. "Notification of proposed penalty" means a written communication issued by the Industrial Commission of Arizona pursuant to A.R.S. § 23-418.
7. "Party" means the Occupational Safety and Health Division of the Commission, the affected employer and affected employees.

### **R20-5-804. Computation of Time**

In computing any period of time prescribed or allowed in these rules, the day from which the designated period begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or legal holiday. When the period of time prescribed

or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

#### **R20-5-805. Record Address**

The initial pleading filed by any person shall contain his name, address and telephone number. Any change in such information must be communicated promptly in writing to the Commission and to all other parties. A party who fails to furnish such correct and current information shall be deemed to have waived his right to object to the validity of any notice and/or service which has been made to the last known address of the party as shown by the records of the Commission.

#### **R20-5-806. Service and Notice**

A. At the time of filing pleadings or other documents a copy thereof shall be served by the filing party on every other party.

B. Service upon a party who has appeared through a representative shall be made only upon such representative.

C. Unless otherwise herein indicated, service may be accomplished by postage prepaid first class mail or by personal delivery. Service is deemed effected at the time of mailing (if by mail) or at the time of personal delivery (if by personal delivery).

D. Proof of service shall be accomplished by a written statement of the same which sets forth the date and manner of service. Such statement shall be filed with the pleading or document.

E. Service and notice to employees represented by an authorized employee representative shall be deemed accomplished by serving the representative in the manner prescribed in subsection (C).

F. In the event that there are any affected employees who are not represented by an authorized employee representative, the employer shall, immediately upon receipt of Notice of the Date of Hearing, post, where the citation is required to be posted, a copy of the Notice of Date of Hearing and a notice informing such affected employees of their right to appear at the hearing and state their position and of the availability of all pleadings for inspection and copying at reasonable times. A notice in the following form shall be deemed to comply with this subsection:

(Name of employer)

Your employer has been cited by the Industrial Commission of Arizona for violation of the Arizona Occupational Safety and Health Act of 1972. The citation has been contested and will be the subject of a hearing before the Industrial Commission. Affected employees are entitled to appear in this hearing under the terms and conditions established by the Industrial Commission in its Rules of Procedure. Notice of Intent to Participate should be sent to:

THE INDUSTRIAL COMMISSION OF ARIZONA  
1601 West Jefferson Street, Phoenix, Arizona 85007.

All papers relevant to this matter may be inspected at: (Place reasonably convenient to employees, preferably at or near workplace.)

Where appropriate, the second sentence of the above Notice will be deleted and the following sentence will be substituted:

The reasonableness of the period prescribed by the Industrial Commission for abatement of the violation has been contested and will be the subject of a hearing before the Industrial Commission.

G. Where service is accomplished by posting, proof of such posting shall be filed not later than the first working day following the posting.

H. The authorized employee representative, if any, shall be served with the notice set forth in subsection (G) and with a copy of the Notice of the Date of Hearing.

I. A copy of the Notice of the Date of Hearing shall be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the Notice of such hearing at or near the place where the citation is required to be posted.

J. A copy of the Notice of the Date of Hearing shall be served by the employer on the authorized employee representative of affected employees in the manner prescribed in subsection (C) of this Section, if the employer has not been informed that the authorized employee representative has entered an appearance as of the date such Notice is received by the employer.

K. Where a petition for hearing is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall, upon receipt of the Notice of the Date of Hearing, serve a copy thereof on such authorized employee representative in the manner prescribed in subsection (C) of this Section and shall file proof of such service.

L. Where a Petition for Hearing is filed by an affected employee or an authorized employee representative, a copy of the Petition for Hearing shall be provided to the employer for posting by the employer at the place the citation is required to be posted.

M. An authorized employee representative who files a Notice of Contest shall be responsible for serving any other authorized employee representative whose members are affected employees.

N. Where posting is required by this Section, such posting shall be maintained until the commencement of the hearing or until earlier disposition.

### **R20-5-807. Consolidation**

Cases may be consolidated on the motion of any party, or on the hearing officer's own motion, where there exist common parties, common questions of law or fact, or both, or in such other circumstances as justice and the administration of the Act require.

**R20-5-808. Severance**

Upon its own motion, or upon motion of any party, the hearing officer may, for good cause, order any proceeding severed with respect to some or all issues or parties.

**R20-5-809. Election to Appear**

A. Affected employees may elect to appear at a hearing for the purpose of testifying or stating their position concerning the subject matter of the hearing.

B. If affected employees desire to appear at the hearing they must so notify in writing the Commission or the hearing officer, if the case has been assigned.

**R20-5-810. Employee Representatives**

A. Employees may appear in person or through a representative.

B. An authorized employee representative shall be deemed to control all matters respecting the interest of such employees in the proceeding.

C. Affected employees who are represented by an authorized employee representative may appear only through such authorized employee representative.

D. Withdrawal of appearance of any representative may be effected by filing a written Notice of Withdrawal and by serving a copy thereof on all parties.

**R20-5-811. Form of Pleadings**

A. Except as provided herein, there are no specific requirements as to the form of any pleading. A pleading is simply required to contain a caption sufficient to identify the parties in accordance with R20-5-812, which shall include the Commission's citation number, and a clear and plain statement of the relief that is sought, together with the grounds therefor.

B. Pleadings and other documents (other than exhibits and petitions for hearing) shall be typewritten and double spaced, on letter size opaque paper (approximately 8 1/2 inches by 11 inches). The left margin shall be 1 1/2 inches and the right margin 1 inch. Pleadings and other documents shall be fastened at the upper left corner.

C. Pleadings shall be signed by the party filing or by his representative. Such signing constitutes a representation by the signer that he has read the document or pleading, that to the best of his knowledge, information and belief the statements made therein are true, and that it is not interposed for delay.

D. The Commission may refuse for filing any pleading or document which does not comply with the requirements of subsections (A), (B), and (C) of this Section.

**R20-5-812. Caption; Titles of Cases**

A. Cases initiated by the cited employer filing a Petition for Hearing contesting the violations cited shall be titled:

Division of Occupational Safety and Health of the Industrial Commission of Arizona, Complainant, vs. (name of employer), Respondent.

B. Cases initiated by the cited employer filing a Petition of Hearing for modification of the abatement period shall be titled:

(name of employer), Petitioner vs. Division of Occupational Safety and Health of the Industrial Commission of Arizona, Respondent.

C. Cases initiated by an affected employee filing a Petition for Hearing for modification of the abatement period shall be titled:

(name of affected employee or authorized employee representative), Petition vs. Division of Occupational Safety and Health of the Industrial Commission of Arizona, Respondent, and (employer), Respondent.

D. The Titles listed in subsections (A) and (B) of this Section shall appear at the left upper portion of the initial page of any pleading or document (other than exhibits and Petitions for Hearing filed).

E. The initial page of any pleading or document (other than exhibits and requests for hearing) shall show the citation number at the upper right of the page, opposite the title.

#### **R20-5-813. Requests for Hearing**

A. Requests for hearing shall be filed with the Commission.

B. Requests for hearing shall be in writing and contain a clear and plain statement of the relief that is sought, together with the grounds thereof.

C. The Commission shall, after receipt of a request for hearing, refer the file to the Hearing Officer Division for determination

#### **R20-5-814. Pre-hearing Conference**

A. At any time before a hearing, the hearing officer, on his own motion or on motion of a party, may direct the parties, or their representatives, to exchange information or to participate in a pre-hearing conference for the purpose of considering matters which will tend to simplify the issues or expedite the proceedings. B. The hearing officer may issue a pre-hearing order which includes the agreements reached by the parties. Such order shall be served on all parties and shall be part of the record.

#### **R20-5-815. Payment of Witness Fees and Mileage**

Witnesses summoned before the hearing officer shall be paid the same fees and mileage that are paid witnesses in the courts of Arizona. Witness fees and mileage shall be paid by the party at whose instance the witness appears.

#### **R20-5-816. Expired**

### **R20-5-817. Failure to Appear -- Withdrawal of Request for Hearing**

A. The failure of a party who has requested a hearing to appear at such scheduled hearing shall be deemed to be an admission of the validity of any citation, abatement period, or penalty issued or proposed, and additionally a waiver of all rights except the right to be served with a copy of the decision of the hearing officer and to request review.

B. Withdrawal of request for hearing shall be construed as an admission of the validity of any citation, abatement period or penalty issued or proposed. No decision need be issued in this case as the subject instrument is deemed to be admitted.

### **R20-5-818. Duties and Powers of Hearing Officers**

It shall be the duty of the hearing officer to conduct a fair and impartial hearing, to assure that the facts are fully elicited, to adjudicate all issues and avoid delay. The hearing officer shall have authority with respect to cases assigned to him, between the time he is designated and the time he issued his decision, subject to the rules and regulations of the Commission, to:

1. Administer oaths and affirmations;
2. Rule upon admissibility of exhibits;
3. Rule upon applications for depositions;
4. Regulate the course of the hearing and, if appropriate or necessary, exclude persons or counsel from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;
5. Call and examine witnesses;
6. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support thereof;
7. Adjourn the hearing as the needs of justice and good administration require;
8. Issue appropriate orders for protection of trade secrets;
9. Take any other action necessary under the foregoing and authorized by the rules and regulations of the Commission.

### **R20-5-819. Witnesses' Oral Deposition; In State**

A. After a request for hearing has been filed with the Commission, any party desiring to take the oral deposition of any other party or witness residing within the state of Arizona shall file with the hearing officer, in duplicate, notice of taking deposition by oral examination. Copies of such Notice shall be served at least five days prior to the date of the deposition upon the deponent and upon every party by the party desiring to take the oral deposition.

B. If any party or the deponent has any objection to the taking of the oral deposition of the party or witness, he shall file with the presiding hearing officer and serve on all parties written objections

thereto setting forth the basis of the opposition to the deposition. Such objection shall be filed with the hearing officer within two days after the notice of taking deposition by oral examination is served.

C. If objections to the taking of the oral deposition are filed with the hearing officer as provided in subsection (B) hereof, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the hearing officer. The hearing officer shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate.

D. The party taking the deposition shall comply with the Arizona Rules of Civil Procedure governing the taking of depositions.

E. The expense of any deposition shall be borne by the party taking the deposition but shall not include the expense of any other party.

F. No scheduled hearing shall be cancelled or continued for failure to take or complete a deposition taken pursuant to the provisions of this rule.

G. Depositions taken pursuant to the provisions of this rule shall only be used at the time of a hearing for impeachment of a witness, unless the deponent is deceased at the time of the scheduled hearing, in which event it may be admitted into evidence.

#### **R20-5-820. Witnesses' Oral Deposition; Out-of-State**

A. After a request for hearing is filed with the Commission, any party desiring to take the oral deposition of any other party or witness residing without the state of Arizona shall file with the hearing officer, in duplicate, a request for permission to take the deposition of such witness or witnesses. Such request shall show the name and address of such witness or witnesses and set forth the reason why said witness or witnesses' testimony is necessary for an adjudication of the issue. Copies of such request shall be served upon each party by the party requesting permission to take the deposition. If no objection to the request for permission to take the deposition is filed as provided in subsection (B) hereof, the hearing officer may, within 10 days, in his discretion, grant or deny the permission to take the deposition. If the hearing officer permits the taking of the deposition, the party may proceed in the manner provided by and subject to the limitations of subsections (A), (D), (E), and (F).

B. If any party has any objections to the taking of the oral deposition of the party or witness, he shall file with the hearing officer and serve on all other parties written objections thereto setting forth the basis for the opposition to the deposition. Such objection shall be filed with the hearing officer within five days after the request to take the deposition is served.

C. If objections to the taking of the oral deposition are filed with the hearing officer as provided in subsection (B) hereof, the hearing officer shall rule on the objections within five days after the filing of the objections. The taking of the oral deposition shall be held in abeyance pending the ruling of the hearing officer. The hearing officer shall either order the deposition to proceed, order that the deposition not be taken, or enter such other protective order as may be appropriate. If the

hearing officer orders that the deposition proceed, the party may proceed to take the deposition in the manner provided by and subject to the limitation of R20-5-819, subsections (A), (D), (E), and (F).

D. Any deposition taken pursuant to the provisions of this rule shall be filed with the Commission at least five days prior to the hearing date or any scheduled hearing and may be admitted into evidence. If the deposition is not filed within the time prescribed herein, it shall not be considered for any purpose except by stipulation of all interested parties, and then only with the concurrence of the hearing officer.

#### **R20-5-821. Parties' Disposition upon Written Interrogatories**

A. After a request for hearing is filed with the Commission, any party desiring to take the deposition of another party upon written interrogatories shall file with the hearing officer, in duplicate, copies of the interrogatories sought to be submitted to the party. The written interrogatories submitted pursuant to this rule shall be limited to 25 in number with no subsections. Copies of such interrogatories shall be filed at least five days prior to any scheduled hearing.

B. Answers to the interrogatories shall be served on all parties by the party answering the interrogatories within 10 days after service of the interrogatories, or within 10 days after a ruling by the hearing officer that the interrogatories be answered.

C. No scheduled hearing shall be cancelled or continued for failure to take or complete the taking of a deposition taken pursuant to the provisions of this rule.

D. Depositions taken pursuant to the provisions of this rule shall only be used at the time of hearing for impeachment of a witness unless the deponent is deceased at the time of the scheduled hearing in which event they may be admitted into evidence.

#### **R20-5-822. Refusal to Answer; Refusal to Attend**

A. If a party or other deponent refuses to answer any question propounded upon oral examination pursuant to R20-5-819 and R20-5-820, the examination shall be completed in other matters or adjourned, as the proponent of the question may prefer. Thereafter on reasonable notice to all persons affected thereby the proponent of the question may apply to the hearing officer for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under R20-5-821, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the hearing officer finds that the refusal was without substantial justification, the hearing officer shall require the refusing party, or deponent and the party, or representative advising the refusal or either of them to pay to the examining party the amount of the reasonable attorney's fees incurred in obtaining the order and the reasonable expenses which will be incurred to obtain the requested answers. If the motion is denied and if the hearing officer finds that the motion was made without substantial justification, the hearing officer shall require the examining party or the representative advising the motion, or both of them, to pay to the refusing party or witness the amount of the reasonable attorney's fees incurred in opposing the motion.

B. If a party or an officer or managing agent of a party wilfully fails to appear before an officer who is to take his deposition after being served with the proper notice, or fails to serve answers to interrogatories after proper service of such interrogatories, the hearing officer, on motion and notice, may strike out all or any part of any pleading of that party, dismiss the action or proceeding or any part thereof, or preclude the introduction of evidence.

#### **R20-5-823. Burden of Proof**

A. In all proceedings other than those stated in subsection (B) commenced by the filing of a request for hearing, the burden of proof shall rest with the Commission.

B. In proceedings commenced by a request for hearing requesting modification of the abatement period, the burden of establishing the necessity for such modification shall rest with the petitioner.

#### **R20-5-824. Intermediary Rulings or Orders by the Hearing Officer**

No intermediary rulings or orders by the hearing officer may be appealed to the Review Board but shall become a part of the record.

#### **R20-5-825. Legal Memoranda**

Legal memoranda may be filed if request is granted by the hearing officer. If such request is granted the hearing officer shall establish a reasonable time for such filing and response or simultaneous filing.

#### **R20-5-826. Decisions of Hearing Officers**

A. The decision of the hearing officer shall include findings and conclusions of fact and law, and an order. B. The hearing officer shall sign the decision. Upon issuance of the decision, jurisdiction shall rest solely in the Commission, and if a request for review is filed it shall be addressed to the Commission.

#### **R20-5-827. Settlement**

A. Settlement is encouraged at any stage of the proceedings where such settlement is consistent with the provisions and objectives of the Act.

B. Settlement agreement submitted by the parties shall be accompanied by an appropriate proposed order which shall be signed by the assigned hearing officer or chief hearing officer.

C. Where parties to the settlement agree upon a proposal, it shall be served upon represented and unrepresented affected employees in the manner set forth in R20-5-806. Proof of such service shall accompany the proposed settlement when submitted to the Commission or the hearing officer.

#### **R20-5-828. Special Circumstances; Waiver of Rules**

In special circumstances, or for good cause shown, the hearing officer may, upon application by any party, or on his own motion, waive any rule or make such orders as justice or the administration of the Act requires.

**R20-5-829. Variances**

A. Any hearing concerning variances shall be filed before the Commissioners at a time set by the Commission.

B. Such proceeding shall be informal but shall be transcribed at the expense of the person seeking the variance if a written record of the proceeding is desired.

# **GENERAL AND SPECIFIC STATUTES**

## **A.R.S. 23-107. General powers**

**A.** The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

**B.** Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

**C.** The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

**D.** Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

### **A.R.S. 23-405. Duties and powers of the industrial commission relative to occupational safety and health**

The commission shall:

1. Administer the provisions of this article through the division of occupational safety and health.
2. Appoint the director of the division of occupational safety and health.
3. Cooperate with the federal government to establish and maintain an occupational safety and health program as effective as the federal occupational safety and health program.
4. Promulgate standards and regulations as required, pursuant to section 23-410, and promulgate such other rules and regulations as are necessary for the efficient functioning of the division.
5. Have the authority to issue reasonable temporary, experimental and permanent variances pursuant to sections 23-411 and 23-412.
6. Exercise such other powers as are necessary to carry out the duties and requirements of this article.

### **A.R.S. 23-420. Hearing rights and procedures**

**A.** Subject to section 23-417, an interested party may request a hearing.

**B.** A request for hearing shall be made in writing, signed by or on behalf of the interested party and including the requesting party's address and e-mail address, stating that a hearing is desired, and mailed or e-mailed to the commission. The request shall also state with particularity the violation, abatement period or penalty that is being protested. Any violation, abatement period or penalty not protested within the time limit specified on the citation or penalty notice will be deemed admitted.

**C.** The commission shall refer the request for hearing to the office of administrative hearings for determination as expeditiously as possible. The administrative law judge assigned to hear a case arising out of this article shall either be employed or contracted by the office of administrative hearings.

**D.** At least five days before any hearing, notice of the time and place of the hearing shall be given to all parties in interest by mail at their last known address. The hearing shall be held in the county where the violation has occurred or such other place as selected by the administrative law judge.

**E.** A record of all proceedings at the hearing shall be kept but need not be transcribed unless a party requests a review of the decision of the administrative law judge.

**F.** Except as otherwise provided in this section and by rules of procedure promulgated by the commission pursuant to section 23-405, paragraph 4, the administrative law judge is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure and shall conduct the hearing in any manner that will achieve substantial justice.

**G.** An interested party is entitled to the issuance of subpoenas for the attendance of witnesses, parties and the production of reports, papers, contracts, books, accounts, documents and testimony that are relevant and material to the issue. The commission or the administrative law judge shall issue such subpoenas. The commission may initiate contempt proceedings against any person who refuses to comply with a duly issued subpoena, on application to the superior court. Any person held in contempt may be punished by a fine of not more than one thousand dollars.

**INDUSTRIAL COMMISSION**

Title 20, Chapter 5, Article 10, Wage Claims



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 17, 2020

**SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA**  
Title 20, Chapter 5, Article 10 - Wage Claims

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### Summary

This Five-Year Review Report (5YRR) from the Industrial Commission of Arizona (Commission) relates to rules in Title 20, Chapter 5, Article 10, regarding Wage Claims.

In the previous 5YRR the Commission proposed to amend R20-5-1006(A)(3) to increase the Commission's wage claim jurisdictional limit from \$2,500 to \$5,000. The Commission indicates it did not complete the rulemaking because of significant staffing turnover and other high priority rulemaking within the agency that prevented revisions from being completed. However, the Commission states it started the rulemaking process to complete this rule change.

### Proposed Action

The Commission has drafted a rulemaking that has been approved by the Commissioners. The Commission intends to move forward with the rulemaking once an exemption to the Governor's Rulemaking Moratorium Order is received. The Commission stated in its Report that it anticipates completing this rulemaking by the end of the calendar year 2020. Council staff followed up with the Commission, and it clarified it anticipates completing the rulemaking by December 2020 if it receives an exemption from the Governor's Rulemaking Moratorium Order.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Commission cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules in Article 10 address the Industrial Commission's processes and procedures associated with filing a claim for unpaid wages. The Commission's Labor Department processed 2,917 wage claims in fiscal year 2019, the latest year for which complete data is available.

Stakeholders include the Commission, employers, and employees.

Consistent with the most recent economic impact statement related to Article 10, which was complete in 2006, the Commission believes that the costs associated with the rules are minimal (less than \$1,000). These costs are incurred through the Commission's implementation of the rules, while employers and employees benefit from the ease of use and improved understanding of the wage claim process.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The benefits of an improved understanding of the wage claim process outweigh the costs of the rules' implementation. Additionally, the Commission believes that rules impose the least burden and costs on the regulated community.

4. **Has the agency received any written criticisms of the rules over the last five years?**

The Commission states they have not received any written criticisms of the rules within the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Commission states the rules are clear, concise, and understandable, except for the following rules, for the reasons stated in the report:

- R20-5-1001 (Definitions);
- R20-5-1002 (Forms);
- R20-5-1003 (Filing Requirements; Time for Filing; Computation of Time);
- R20-5-1004 (Investigation of Claim);
- R20-5-1006 (Dismissal of Claim);
- R20-5-1007 (Notice of Right of Review);
- R20-5-1008 (Payment of Claim); and

- R20-5-1009 (Service of Determinations, Notices, and Other Documents).

The Commission indicates the rules are consistent with other rules and statutes, except for rule R20-5-1006(A)(3). R20-5-1006(A)(3) is inconsistent with A.R.S. § 23-356, which was amended in 2012 to increase the Department's jurisdictional limit for wage claims from \$2,500 to \$5,000. A.R.S. § 23-356 still references the former jurisdictional limit of \$2,500.

The Commission indicates that the rules are effective in achieving their respective objectives.

**6. Has the agency analyzed the current enforcement status of the rules?**

Yes, the Commission states the rules are enforced as written except for R20-5-1006(A)(3), which contains the \$2,500 wage claim jurisdictional limit. The Commission instead enforces the \$5,000 wage claim jurisdictional limit pursuant to A.R.S. § 23- 356.

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

Not applicable. There is no corresponding federal law.

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

There have been no rules adopted after July 29, 2010, which require the issuance of a permit or license in Article 10.

**Conclusion**

As mentioned above, the Commission is planning to amend the rules to improve its overall effectiveness, clarity, understandability, and consistency with other rules and statutes. The Commission plans to complete a rulemaking by December 2020. Council staff recommends approval of this report.

**THE INDUSTRIAL COMMISSION OF ARIZONA  
OFFICE OF THE DIRECTOR**



DALE L. SCHULTZ, CHAIRMAN  
JOSEPH M. HENNELLY, JR., VICE CHAIR  
SCOTT P. LEMARR, MEMBER  
STEVEN J. KRENZEL, MEMBER

P.O. Box 19070  
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR  
PHONE: (602) 542-4411  
FAX: (602) 542-7889

May 22, 2020

Sent via e-mail to [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsins, Chair  
Governor's Regulatory Review Council  
Arizona Department of Administration  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

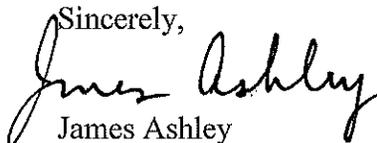
Re: A.A.C. Title 20, Chapter 5, Article 10, Five-year Review Report

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached Five-year Review Report on 20 A.A.C. 5, Article 10. The Commission has timely filed this report on or before Friday, May 29, 2020, after receiving a 120-day extension from the Council.

An electronic copy of this cover letter, the Report, the rules being reviewed, and the general and specific statutes authorizing the rules, are concurrently submitted by e-mail to Krishna Jhaveri. The Commission believes that the Report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 10, and, with this letter, I certify that the Commission is in compliance with A.R.S. § 41-1091. Should you have any questions concerning the report, please contact Chief Counsel Gaetano Testini at (602)-542-5905.

Sincerely,  
  
James Ashley  
Director

Enclosures

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 10. WAGE CLAIMS**

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 10. WAGE CLAIMS**

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4.	GENERAL AND SPECIFIC STATUTES	Attached

## **FIVE-YEAR REVIEW SUMMARY**

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers, which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

### **Certification Regarding Compliance with A.R.S. § 41-1091**

In the cover letter for this report, the Commission’s Director certifies that the Commission is in compliance with A.R.S. § 41-1091 with respect to the substantive policy statements relating to the rules in Article 10, as well as other substantive policy statements and all rules, which are available on the Commission’s website.

### **About Article 10**

Pursuant to A.R.S. 23-356, an employee may file a claim with the Commission’s Labor Department (the “Department”) for unpaid wages of \$5,000.00 or less in lieu of pursuing a civil action against an employer. Article 10 establishes the administrative process for wage claims, including the procedure an employee must follow to submit a wage claim, the procedure an employer must follow in responding to a wage claim, and the Department’s process for investigating and rendering a determination on a claim. The Department processed 2,917 wage claims in fiscal year 2019, the latest year for which complete data is available.

**FIVE-YEAR-REVIEW REPORT**  
**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**  
**CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**  
**ARTICLE 10. WAGE CLAIMS**

**1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.**

The rules in Article 10 have general and specific authorization under A.R.S. §§ 23-107 and 23-361. A.R.S. § 23-107(A)(1) provides that the Commission “has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1].” A.R.S. § 23-361 provides that “[t]he commission may adopt such rules and regulations as necessary for the purpose of administering and enforcing [A.R.S. Title 23, Chapter 2, Article 7].”

**2. Objective of the rules, including the purposes for the existence of the rules.**

The objective of Article 10 is to set forth clear procedures for filing, processing, investigating, and rendering decisions on wage claims.

R20-5-1001. Definitions

This rule sets forth the definitions for Article 10.

R20-5-1002. Forms

This rule establishes the wage claim and employer response forms and sets forth the information required in the forms.

R20-5-1003. Filing Requirements; Time for Filing; Computation of Time

This rule outlines the procedure for filing a wage claim, time for filing a wage claim, how time is calculated under the rule, and the consequences of not providing all required information in a wage claim.

R20-5-1004. Investigation of Claim

This rule outlines the procedures used by the Labor Department to conduct a wage investigation and gather information from a claimant and an

employer. The rule also outlines the consequences of an employer's failure to respond to a wage claim or provide complete information.

R20-5-1005. Mediation of Disputes

This rule outlines the Labor Department's authority to mediate and conciliate wage-related disputes.

R20-5-1006. Dismissal of Claim

This rule outlines the circumstances under which the Labor Department will dismiss a wage claim.

R20-5-1007. Notice of Right of Review

This rule establishes review rights following issuance of a determination under A.R.S. § 23-357.

R20-5-1008. Payment of Claim

This rule outlines procedures the Labor Department follows regarding payment of wages.

R20-5-1009. Service of Determinations, Notices, and Other Documents

This rule describes the manner of service of determinations and when service is completed.

3. **Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached.**

The rules reviewed are effective in achieving their respective objectives. This determination is based on the Commission's experience using the rules and the significant number of wage claims processed by the Labor Division. The Department processed 2,917 wage claims in fiscal year 2019, the latest year for which complete data is available.

4. **Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

Except as noted below, the rules are consistent with state and federal statutes and rules, including A.R.S. §§ 23-350 through 23-362. The Commission is not aware of any other conflicting or duplicative statutes or rules.

- R20-5-1006(A)(3) is inconsistent with A.R.S. § 23-356. Section 23-356 was amended in 2012 to increase the Department’s jurisdictional limit for wage claims from \$2,500.00 to \$5,000.00. R20-5-1006(A)(3) still references the former jurisdictional limit of \$2,500.00 and needs to be amended.

**5. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement.**

The rules reviewed are enforced as written except the Department enforces the \$5,000.00 wage claim jurisdictional limit contained in A.R.S. § 23- 356 (as the statute supersedes the \$2,500.00 wage claim limit in R20-5-1006(A)(3)). Although the volume of wage claims has increased significantly over the last few years, the Commission is not aware of any problems with enforcement.

**6. Clarity, conciseness, and understandability of the rules.**

Except as noted below, the rules in Article 10 are clear, concise, and understandable.

- R20-5-1001(8); R20-5-1003(F); R20-5-1004(A), (B), (C), (D), (G); R20-5-1006(B); R20-5-1007(B); R20-5-1008(B); and R20-5-1009 all reference and otherwise define service as transmission through U.S. Mail. Given advancements in technology, the Commission is pursuing rulemaking to update Article 10 to permit electronic transmission of documents pertaining to a wage claim, with consent of the parties.
- R20-5-1002 – The introductory sentence to the rule includes an outdated website address for the Commission. The Commission is pursuing rulemaking to update the web address.

- R20-5-1003(E) – The rule requires forms or documents to be completed in ink or type. The Commission is pursuing rulemaking to eliminate this restriction.
- R20-5-1004(F) – The rule when referencing the Director uses “his.” The Commission is pursuing rulemaking to eliminate the use of “his.”
- R20-5-1004(F) – The rule references “tape recording” conferences with or statements made by a claimant and employer. The Commission is pursuing rulemaking to update the reference to include other electronic or digital methods of recording.
- R20-5-1008(A) – The rule only permits wage payment to be mailed by the Department to the claimant. The Commission will pursue rulemaking to permit a claimant to pick up a wage payment in person at the Labor Department offices.

7. **Written criticisms of the rules received by the agency within the five years immediately preceding the five-year review report.**

The Commission has not received any written criticisms of the rules within the five years immediately preceding this report.

8. **A comparison of the estimated economic, small business, and consumer impact of the rules with the economic, small business, and consumer impact statement prepared on the last making of the rules or, if no economic, small business, and consumer impact statement was prepared on the last making of the rules, an assessment of the actual economic, small business, and consumer impact of the rules.**

The most recent Economic Impact Statement related to Article 10 was in 2006. The Commission does not believe that the current estimated economic, small business, and consumer impact of the rules is substantially different from that set out in the 2006 Economic Impact Statement, as referenced in the 2014 Five-Year-Review Report. The economic impact of the rules has been consistent with the economic impact predicted in the 2006 Economic Impact Statement.

9. **Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states.**

No business competitiveness analysis has been submitted to the Commission regarding Article 10.

10. **If applicable, whether the agency completed the course of action indicated in the agency's previous five-year-review report.**

The previous Five-Year-Review Report on Article 10 was approved by the Governor's Regulatory Review Council ("GRRC") on August 4, 2015. The previous report proposed to amend R20-5-1006(A)(3) to increase the Department's wage claim jurisdictional limit from \$2,500.00 to \$5,000.00 to be consistent with A.R.S. § 23-356. However, significant staffing turnover and other higher priority rulemaking within the agency prevented the revisions from being timely completed. The Commission has begun the rulemaking process to complete this rule change.

11. **A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated.**

The probable benefits of the rules in Article 10 outweigh the probable costs. In addition, the Commission believes that the rules impose the least burden and costs on the regulated community.

12. **A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

The rules in Article 10 implement state law. There is no corresponding federal law.

13. **For rules adopted after July 29, 2010, that require issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

There have been no rules adopted after July 29, 2010, which require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action.**

The Commission has commenced the rulemaking process to complete all amendments discussed in Sections 4 and 6, above. The Commission anticipates completing this rulemaking in calendar year 2020.

# **RULES REVIEWED**

## **ARTICLE 10. WAGE CLAIMS**

### **R20-5-1001. Definitions**

In this Article, unless the context otherwise requires:

1. “Claim” means a wage claim pursuant to A.R.S. § 23- 356.
2. “Claimant” means an individual who files a claim.
3. “Day” means calendar day.
4. “Department” means the Labor Department of the Industrial Commission of Arizona.
5. “Determination” means a finding by the Department under A.R.S. § 23-357 that a claim is either valid or invalid or that the Department cannot resolve the dispute.
6. “Director” means the Director of the Department.
7. “Dismissal” means an action by the Department in which the Department dismisses the claim and refers the claimant to other statutory remedies.
8. “Notice” or “notification” when made by the Department or the Director means a written communication transmitted to the employer or claimant, or both, by regular mail.

### **R20-5-1002. Forms**

The following forms are available upon request from the Department or from the Industrial Commission’s Internet web site at [www.ica.state.az.us](http://www.ica.state.az.us):

1. Wage claim. When making a claim, a claimant shall provide the following information to the Department:
  - a. Claimant’s name, address, telephone number, and date of birth;
  - b. Employer’s name, address, telephone number, and description of business;
  - c. Claimant’s dates of employment, position, and pay;
  - d. The amount of the wages claimed and whether the claimant requested payment of the wages from employer; and
  - e. Claimant’s signature and signature date.
2. Employer response. The employer responding to a claim shall provide the following information to the Department:

- a. Employer's name, address, telephone number, and description of business;
- b. Claimant's dates of employment, position, and pay;
- c. Whether claimant is owed any wages, and, if so, employer's reason for nonpayment; and
- d. Employer's signature and signature date.

#### **R20-5-1003. Filing Requirements; Time for Filing; Computation of Time**

**A.** A claimant shall file a claim with the Department within one year of the date of the accrual of the claim.

**B.** In computing any period of time prescribed or allowed by this Article, the day of the act or event from which the designated period of time begins to run is not included. The last day of the period and Saturdays, Sundays, and legal holidays are included in the computation of time.

**C.** The date of filing of the claim is the date the claimant's wage claim form is received by the Department.

**D.** The Department shall deem a form, document, instrument, or other written record filed at the Tucson office as filed at the Phoenix office for the purpose of computing time.

**E.** An individual filing a form or document related to a claim shall legibly fill out the form or document in ink or type.

**F.** If the wage claim form received from a claimant does not include the information required by R20-5-1002(1), the Department shall return the wage claim form to the claimant by regular mail with a request that the claimant provide the required information and return the completed wage claim form to the Department within 10 days from the date of the Department's request. If the Department does not receive the completed wage claim form within 10 days, the Department shall not initiate an investigation of the claim and the Department shall consider the claim withdrawn without prejudice. The claimant may re-file a withdrawn wage claim with the information required by R20-5-1002(1), if the claim is re-filed within one year of the date of the accrual of the claim.

#### **R20-5-1004. Investigation of Claim**

**A.** The Department shall mail a copy of a claimant's wage claim form within 10 days after the Department's receipt of the form to the employer listed on the wage claim, with a request that the employer complete and file the employer response form within 10 days of the date of the Department's mailing.

**B.** If the Department does not receive the employer response form under subsection (A), the Department shall provide written notice to the employer stating that the employer must pay the amount claimed or file a written response to the wage claim within 10 days of the date of the Department's written notice.

**C.** If the employer timely files the employer response under subsection (A), but the response is incomplete, the Department shall mail the employer a notice requesting that the employer file the

required information within 10 days of the date of the Department's notice. If the Department does not receive the required information within 10 days, the Department shall make a determination regarding the claim based on the evidence in the file.

**D.** If the employer's response disputes the amount of wages claimed by the claimant, the Department shall mail a copy of the employer's response to the claimant and offer the claimant the opportunity to file a written reply to the employer's response within 10 days from the date of the Department's mailing. If the Department does not receive claimant's reply within 10 days, the Department shall make a determination of the claim based on the evidence in the file.

**E.** If the employer fails or refuses to pay the amount claimed or submit a written response to the claim in accordance with subsection (B), the Department shall make a determination of the claim based on the evidence in the file.

**F.** Upon request from the Department, and if necessary to complete the Department's investigation, the claimant, the employer, or both, shall submit further written information or meet with the Director or his designee. Except for statements made during settlement, mediation, or an informal conference, the Director or his designee shall administer oaths for the purpose of taking affidavits and shall tape record the meeting.

**G.** Upon completion of its investigation, the Department shall notify the parties to the claim of the Department's determination in writing.

#### **R20-5-1005. Mediation of Disputes**

**A.** During the investigation of a claim, the Department may mediate and conciliate a dispute between the claimant and the employer.

**B.** If mediation results in an informal resolution of the claim, the Director or the Director's designee shall prepare and ensure execution of documents providing for the resolution of the claim.

#### **R20-5-1006. Dismissal of Claim**

**A.** The Department shall dismiss a claim if:

1. The claim is filed more than one year after the date of the accrual of the claim,
2. The claimant does not comply with R20-5-1003(F),
3. The amount of wages claimed exceeds \$2,500.00,
4. The Department's investigation of the claimant's evidence reveals no possible violation of A.R.S. § 23-350 et seq.,
5. The claimant has filed a civil action regarding the same claim,
6. The employer listed on the claim is in bankruptcy,

7. The Department is unable to locate the employer based on the information provided by the claimant, or

8. The wages in question have been withheld from the claimant pursuant to the claimant's prior written authorization.

**B.** The Department shall send a notice of dismissal to the claimant and, except as provided in subsections (A)(1) through (A)(3) and (7), the Department shall send a notice of dismissal to the employer. Notices of dismissal shall notify the claimant of the availability of other remedies.

#### **R20-5-1007. Notice of Right of Review**

**A.** A determination issued under A.R.S. § 23-357 shall include a notice informing the parties of their right to seek review under A.R.S. § 23-358 and § 12-901 et seq.

**B.** The Department shall serve a determination on the parties by regular mail.

#### **R20-5-1008. Payment of Claim**

**A.** The Department shall send any payment of a wage claim received by the Department to the claimant by certified mail, return receipt requested.

**B.** If the Department discovers that payment of a wage claim is alleged to have been made directly to the claimant, the Department shall verify the payment by sending a letter to the claimant by regular mail. If the claimant does not respond to the Department's letter within 10 days of the date of the Department's letter, the Department shall deem the claim to have been paid.

**C.** Payment of a partial amount of a wage claim does not preclude the Department from completing its investigation of the balance of the claim.

**D.** In the case of a determination and directive for payment issued by the Department under A.R.S. § 23-357, the Department shall, if the employer agrees and with the written consent of the claimant, enter into a payment agreement with the employer for payment of the amount of wages found to be owed the claimant.

#### **R20-5-1009. Service of Determinations, Notices, and Other Documents**

**A.** A determination, notice, or other document required by this Article or other law to be mailed or served upon a party, shall be made upon the party, or, if represented by legal counsel, the party's legal counsel. Service upon legal counsel is considered service upon the party.

**B.** Service may be made and is deemed complete by depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, or by personal delivery upon the party.

# **GENERAL AND SPECIFIC STATUTES**

## **A.R.S. 23-107. General powers**

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

**B.** Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

**C.** The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

**D.** Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

#### **A.R.S. 23-361. Rules and regulations**

The commission may adopt such rules and regulations as necessary for the purpose of administering and enforcing this article.

**DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 7, Article 9, Particle Accelerators



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 14, 2020

**SUBJECT: DEPARTMENT OF HEALTH SERVICES**  
Title 9, Chapter 7, Article 9 - Particle Accelerators

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### Summary

This Five-Year Review Report (5YRR) from the Department of Health Services (Department) relates to rules in Title 9, Chapter 7, Article 9, regarding Particle Accelerators. The rules in this Article establish procedures and requirements for the registration and the use of particle accelerators.

In the previous 5YRR the Department stated that the Arizona Radiation Regulatory Agency believed that the executive orders prohibited making changes to the rules. Since then, the Department indicates no substantive issue has arisen that would necessitate requesting an exemption from the rulemaking moratorium.

### Proposed Action

The Department indicates it plans to review the rules in the entire Chapter after completing 5YRRs on all Articles, the last being due in December 2021. Therefore, in December 2021 or shortly thereafter, the Department will decide whether a rulemaking is necessary and if so, establish a time-frame to complete the rulemaking

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

No substantive changes have been made to the rules in the last five years. In March 2018 the rules were re-codified into 9 A.C.C. 7 Article 9, without any substantive changes, from 12 A.C.C. 1, Article 9. The Department states that they specifically register 72 entities that use the rules in Article 9. They go on to indicate that almost all of these entities provide radiation therapy services to patients, but that some produce radiopharmaceuticals or use a particle accelerator to irradiate delicate parts, such as microchips.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the rules provide the minimum requirements to ensure safe operation of particle accelerators. They also believe that the substantive content of the rules is the minimum necessary to protect health and safety, and that the protection of the public health and safety outweigh the probable cost of the rules.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates that it has not received any written criticisms of the rules over the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes, the Department states the rules under review are clear, concise, understandable, effective, and consistent with other rules and statutes, except for the following rules, for the reasons stated in the report:

- R9-7-901 (Purpose and Scope);
- R9-7-902 (Definitions);
- R9-7-903 (General Registration Requirements);
- R9-7-904 (Registration of Particle Accelerators Used in the Practice of Medicine);
- R9-7-905 (Medical Particle Accelerator Equipment, Facility and Shielding, and Spot Checks);
- R9-7-906 (Limitations);
- R9-7-907 (Shielding and Safety Design);
- R9-7-909 (Warning Systems);
- R9-7-910 (Operating Procedures);
- R9-7-911 (Radiation Surveys);

- R9-7-913 (Misadministration); and
- Appendix A (Quality Control Program).

5. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

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

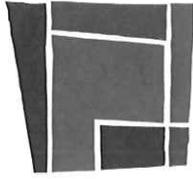
Not applicable. There is no corresponding federal law.

7. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Yes, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department to issue licenses and registrations for sources of radiation and those persons using those sources. The Department issues a general permit under the rules in 9 A.A.C. 7 that applies to certain levels of radioactive material. Specific permits are issued for quantities and uses that are specific to the user and their training or scope of practice. An accelerator facility registration, issued under R9-7-1302(E)(5), is a permit specific to the facility and complies with A.R.S. § 41-1037.

**Conclusion**

As mentioned above, the Department indicates that it plans to review the rules in the entire Chapter after completing 5YRRs on all Articles in the Chapter, the last being due December 2021. In December 2021, or shortly thereafter, the Department will evaluate the entire Chapter and determine whether a rulemaking is necessary. The Department indicates that the rules in Article 17 must comply with an Agreement with the federal Nuclear Regulatory Commission, and must discuss any possible changes with the NRC before initiating a rulemaking. Council staff recommends approval of this report.



# ARIZONA DEPARTMENT OF HEALTH SERVICES

## POLICY & INTERGOVERNMENTAL AFFAIRS

May 19, 2020

**VIA EMAIL:** [grrc@azdoa.gov](mailto:grrc@azdoa.gov)

Nicole Sornsin, Esq., Chair  
Governor's Regulatory Review Council  
100 North 15th Avenue, Suite 305  
Phoenix, Arizona 85007

RE: Department of Health Services, 9 A.A.C. 7, Article 9, Five-Year-Review Report

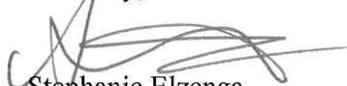
Dear Ms. Sornsin:

Please find enclosed the Five-Year-Review Report from the Arizona Department of Health Services (Department) for 9 A.A.C. 7, Article 9, Particle Accelerators, which is due on June 30, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Ruthann Smejkal at [Ruthann.Smejkal@azdhs.gov](mailto:Ruthann.Smejkal@azdhs.gov) or 602-364-1230.

Sincerely,



Stephanie Elzenga  
Director's Designee

SE:rms

Enclosures

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

150 North 18th Avenue, Suite 500, Phoenix, AZ 85007-3247    P | 602-542-1025    F | 602-542-1062    W | [azhealth.gov](http://azhealth.gov)

*Health and Wellness for all Arizonans*



**Arizona Department of Health Services**  
**Five-Year-Review Report**  
**Title 9. Health Services**  
**Chapter 7. Department of Health Services**  
**Radiation Control**  
**Article 9. Particle Accelerators**  
**May 2020**

**1. Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 30-654(B)(5) and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 30-654, 30-657, 30-671, 30-672, and 30-673

**2. The objective of each rule:**

Rule	Objective
R9-7-901	To provide notice of the scope and purpose of the rules in Article 9.
R9-7-902	To define terms specific to the Article to enable general understanding of the terms.
R9-7-903	To establish requirements for applicant qualifications, equipment, facilities, and operating and emergency procedures, as a supplement to requirements in Article 2 of the Chapter, to protect public health and safety. To require the appointment of a Radiation Safety Officer.
R9-7-904	To specify additional requirements for applicants planning to use a particle accelerator in the practice of medicine.
R9-7-905	To specify equipment standards, facility and shielding requirements, spot checks of equipment performance, and restrictions on operation.
R9-7-906	To establish limits on what individuals may operate a particle accelerator, require that a Radiation Safety Officer be given authority to terminate operations as necessary to protect health and safety, and specify parameters for use of equipment capable of both stationary and moving beam therapy.
R9-7-907	To specify requirements for shielding and for documentation related to shielding.
R9-7-908	To specify requirements for particle accelerator control panels and interlock systems to protect health and safety.
R9-7-909	To specify requirements for warning systems in high radiation areas to protect health and safety.
R9-7-910	To specify minimum operating procedures for particle accelerators, including documentation requirements and safety requirements.
R9-7-911	To specify requirements for surveys to detect radiation levels and for recordkeeping related to surveys.
R9-7-913	To define the term “misadministration” and establish requirements for notification of the Department of an instance of misadministration, including specification of the content of records related to an instance of misadministration.
R9-7-914	To specify that the Department will conduct an inspection of a particle accelerator before it is used to treat human disease.

Appendix A	To specify the minimum quality control tests to be conducted on a particle accelerator to protect health and safety.
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3. **Are the rules effective in achieving their objectives?** Yes X No     
*If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.*

Rule	Explanation
Multiple	Although the rules are generally effective, changes to address the items described below would improve the effectiveness of the rules.
R9-7-902	The rule would be more effective if emerging types of radiotherapy, such as Intensity-Modulated Radiation Therapy (IMRT), Volumetric Modulated Arc Radiotherapy (VMAT), Stereotactic Radiosurgery (SRS), and Stereotactic Body Radiation Therapy (SBRT), were defined.
R9-7-904	The rule would be more effective if the guidelines from the American Society for Radiation Oncology (ASTRO) and the American Association of Physicists in Medicine (AAPM) were included in subsection (G) to account to emerging technologies.
R9-7-905	The rule may be more effective if requirements in subsection (D) were included in R9-7-910.

4. **Are the rules consistent with other rules and statutes?** Yes X No     
*If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.*

Rule	Explanation

5. **Are the rules enforced as written?** Yes X No     
*If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.*

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes    No X  
*If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.*

Rule	Explanation
Multiple	The rules would be clearer if minor grammatical or formatting changes were made.
R9-7-901	The rule would be clearer if Article 13 were included in the list of Articles with which registrants are required to comply.
R9-7-902	The rule would be clearer if the rule stated that definitions in R9-7-102 also apply in this

	Article, especially when the term “interlock” is defined by referring to Article 1. In addition, the definitions for “added filter,” beam-limiting device,” “control panel,” and “spot check” should cite to R9-7-602, not state “See Article 6.” Since the terms are used in more than one Article in the Chapter, the terms could also be moved into R9-7-102. The definition for “beam-monitoring system” should be changed so both “system” and “monitor” are not used as part of the definition. The definition is also circular with the definition of “monitor unit.” A number of terms are used without definitions, including “radiation therapy,” radiation detector,” “useful beam,” and “collimator.” Definitions are also needed for emerging technologies, such as IMRT, VMAT, SRS, and SBRT.
R9-7-903	The rules would be clearer if the phrase “qualified by training and experience” were better explained/described. Subsection (B)(3) should read “Radiation Safety Officer” rather than “radiation safety officer.”
R9-7-904	The rule would be clearer if the content better reflected the title of the Section, since “human research” in subsection (B) is not “the <b>practice</b> of medicine.” Subsection (B) should also read “Article 7 of this Chapter, and performs” rather than “9 A.A.C. 7, Article 7, and performing.” Subsections (B)(5), (6), and (7) do not match the formatting established for subsection (B). Subsection (C)(2)(b) would be clearer if the term “misadministration” were defined in R9-7-902 rather than in R9-7-913. Subsection (E) would be clearer if the term “high confidence” were explained and the rule stated which “Appendix A” is meant, since there are multiple Appendices A in the Chapter. The rule would also be clear if the URL specified in subsection (G) were updated and additional guidance from sources such as ASTRO and AAPM were added.
R9-7-905	The rule would be improved if subsections (A)(1)(d) and (2) specified or cited to how often and by whom leakage radiation measurements and measurement of the effectiveness of beam limiting devices should be done. Several terms, such as “wedge filters,” “field flattening filters,” “beam scattering filters,” “radiation head,” “localizing device,” “termination condition,” “interruption condition,” and “therapy facility,” are used but not defined in the rules. The difference, if any, between “therapy beam” in subsection (B)(3)(d) and “useful beam” is also unclear, as is the meaning of “Capabilities shall be provided” in subsection (A)(10). The content of subsection (B)(3)(d)(i) could also be clearer, and subsection (B)(3)(d)(v) reworded to conform to the formatting of the subsection. The rule would also be improved if the purpose of doing spot checks (checking calibration, shielding, for leakage, etc.) were clearer. The rule would be more concise if subsection (A)(5)(f) were removed since the content is now included in R9-7-902. Subsection (B)(2) also appears to duplicate parts of R9-7-907(A).
R9-7-906	The rule would be more concise if the content of subsection (C) were incorporated into R9-7-905(A)(8) and duplicative requirements removed.
R9-7-907	The rule would be clearer if subsection (A) were revised so requirements for two persons were not contained in the same subsection.
R9-7-909	The rule would be more concise if subsections (2) and (3) were combined into one subsection containing both requirements.
R9-7-910	The rule would be clearer if the phrase “secure from use” were defined or described. Subsection (C) would be clearer if it specified who performs testing and where records are maintained. Subsection (E) would be improved if it were clearer that by-passing an interlock should only be done for calibration or testing purposes.
R9-7-911	Subsection (B)(3) would be clearer if the applicable Sections in Article 4 were cited.
R9-7-913	The rule may be improved by changing the terminology from “misadministration” to the more generally recognized term “medical event.”
Appendix A	Appendix A is cited to in R9-7-904(F) related to the tests and checks required in a quality management program. However, in neither location is there much description or

	explanation for what these tests or checks entail. The rule would also be improved by being updated to accommodate emerging technologies. In subsection (E)(1), the term “third party TLD” is unclear. Subsection (E)(2) is in the passive voice.
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7. **Has the agency received written criticisms of the rules within the last five years?** Yes \_\_\_ No X  
*If yes, please fill out the table below:*

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Pursuant to Laws 2017, Ch. 313, and Laws 2018, Ch. 234, the Department succeeded to the authority, powers, duties, and responsibilities of the Arizona Radiation Regulatory Agency for the regulation of radioactive materials and those persons using them. The rules in Article 9 were recodified in 2018 from 12 A.A.C. 1 to 9 A.A.C. 7, and the current codification is used when describing the economic impact of the rules, even though the rulemakings were in 12 A.A.C. 1. Most of these rules were first adopted in 1977, with revisions made and Sections added in other rulemakings over the ensuing years. No economic impact statements (EISs) are available to the Department for the original rulemaking or any of the subsequent rulemakings except a rulemaking effective August 1, 2009, so the economic impact of the Sections made/revised in the three other pertinent rulemakings was assessed from information in the Notice of Final Rulemaking for the rulemaking, including review of the changes made. If a rule included in a rulemaking was further revised in a subsequent rulemaking, the impact of the rule is considered in the description of the subsequent rulemaking.

Currently, the Department specifically registers 72 entities that use the rules in Article 9. Almost all of these entities provide radiation therapy services to patients. Others produce radiopharmaceuticals or use a particle accelerator to irradiate delicate parts, such as microchips. In analyzing the economic effect on these entities, annual cost/revenue changes are designated as minimal when \$2,000 or less, moderate when between \$2,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues.

One Section, R9-7-914, was made in 2001 and has not been revised in a subsequent rulemaking. No EIS is available for this rulemaking. This rule requires that a particle accelerator used in the practice of medicine be inspected by the Department before use on a patient, and it clarifies a requirement that had been in R12-1-904(G) at the time of the rulemaking. The cost to the regulated community from this rule was estimated to be at most minimal. The Department believes the economic impact is as estimated.

In a rulemaking effective in 2003, R9-7-903, R9-7-906, R9-7-908, R9-7-909, and R9-7-910 were last revised. No EIS is available for this rulemaking. In R9-7-903, changes were made to clarify, simplify, and remove requirements. In R9-7-906, requirements were added in subsection (A) to separate some requirements specific to those using a particle accelerator for radiation therapy from those using a particle accelerator for industrial purposes and to clarify the existing requirements in R9-7-903 that were being removed. In subsection (C), requirements were added for equipment capable of both stationary and moving beam therapy to ensure the safety

of patients, operators, and others. Revisions made to R9-7-908 and R9-7-909 removed passive language without making a substantive change. These changes were believed to improve clarity and understandability and to have little economic impact on registrants. The Department believes the economic impact is as estimated.

The rulemaking in 2007 made clarifying changes to R9-7-901, and no economic impact was anticipated. No EIS is available for this rulemaking. The Department believes the economic impact is as estimated.

The rules in R9-7-902, R9-7-904, R9-7-905, R9-7-907, R9-7-910, R9-7-911, R9-7-913, and Appendix A were last revised in 2009. An EIS is available for this rulemaking. In R9-7-902, a definition was added. In R9-7-904, requirements for a radiation safety committee, which had been in R12-1-706, were moved into the rule, and clarifying changes and an updated incorporation by reference added. Clarifying changes, including a corrected cross-reference, were made in R9-7-905, along with changing retention requirements for calibration records from two to three years to be consistent with the retention requirements for other documents in the Chapter. Shielding and other radiation exposure controls were added to R9-7-907 to improve safety. In R9-7-910, R9-7-911, R9-7-913, and Appendix A, clarifying changes were made. The EIS stated that the only persons affected by these changes may be registrants, who were anticipated to incur minimal costs. The Department believes the economic impact is as estimated.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes  No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

*Please state what the previous course of action was and if the agency did not complete the action, please explain why not.*

The 2015 five-year-review report stated that the Arizona Radiation Regulatory Agency believed that executive orders prohibited making changes to the rules, despite some changes that could be made to address identified issues. Since then, no substantive issue has arisen that would necessitate requesting an exception from the rulemaking moratorium, so the course of action has been followed.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department believes that the rules provide the minimum requirements to ensure the safe operation of particle accelerators. The rules contain requirements for qualifications of applicants and operators, including limits on what individuals may operate a particle accelerator; for equipment, including spot checks of equipment performance, requirements for surveys to detect radiation levels, and minimum quality control tests; for facilities, including facility and shielding requirements and safety systems; and operating and emergency procedures, including recordkeeping. The Department believes that the substantive content of the rules is the minimum necessary to protect health and safety and that the protection of public health and safety outweigh the probable costs of the rules. The Department also believes that, despite the minor issues identified in this report, which may

impose a minor regulatory burden, the rules impose the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes  No

*Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?*

There are no corresponding federal regulations that regulate the use of particle accelerators.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

In March 2018, these rules were recodified into 9 A.A.C. 7, Article 9, without any substantive changes, from 12 A.C.C. 1, Article 9, to clarify that the Department had assumed responsibility for regulating the use, storage, and disposal of sources of radiation, including particle accelerators, in compliance with Laws 2017, Ch. 313, and Laws 2018, Ch. 234. The rules in 12 A.A.C. 1, Article 9, were all adopted before July 29, 2010. However, A.R.S. § 30-672, as amended by Laws 2017, Ch. 313, authorizes the Department is to issue licenses and registrations for sources of radiation and those persons using these sources. A general permit issued under the rules in 9 A.A.C. 7 applies to certain levels of radioactive material, and specific permits are issued by rule for quantities and uses that are specific to the user and their training or scope of practice. An accelerator facility registration, issued under R9-7-1302(E)(5), is a permit specific to the facility.

14. **Proposed course of action**

*If possible, please identify a month and year by which the agency plans to complete the course of action.*

The minor items and possible changes described in paragraph 6 are not substantive. As discussed with the Council on the occasion of another 5YRR, it does not make sense in most cases, and is certainly not effective or efficient, to try to revise the Articles in Chapter 7 piecemeal. The Department plans to evaluate the entire Chapter, after finishing reviews of all the Articles in the Chapter, to determine whether a rulemaking is necessary and, if so, to establish a time-frame to complete the rulemaking. According to the Department's current schedule, the last five-year report for the Chapter is due in December 2021. Based on the reviews of those Articles that have been completed, the Chapter may need to be extensively revised. In addition, for many of the Sections in the Article, the rules must conform to NRC requirements, so it is much more feasible for this to occur during one encompassing rulemaking of the entire Chapter in which the NRC will be involved.

## **ARTICLE 9. PARTICLE ACCELERATORS**

### Section

- R9-7-901. Purpose and Scope
  - R9-7-902. Definitions
  - R9-7-903. General Registration Requirements
  - R9-7-904. Registration of Particle Accelerators Used in the Practice of Medicine
  - R9-7-905. Medical Particle Accelerator Equipment, Facility and Shielding, and Spot Checks
  - R9-7-906. Limitations
  - R9-7-907. Shielding and Safety Design
  - R9-7-908. Particle Accelerator Controls and Interlock Systems
  - R9-7-909. Warning Systems
  - R9-7-910. Operating Procedures
  - R9-7-911. Radiation Surveys
  - R9-7-912. Reserved
  - R9-7-913. Misadministration
  - R9-7-914. Initial Inspections of Particle Accelerators Used in the Practice of Medicine
- Appendix A. Quality Control Program

## **ARTICLE 9. PARTICLE ACCELERATORS**

### **R9-7-901. Purpose and Scope**

- A.** This Article establishes procedures and requirements for the registration and the use of particle accelerators.
- B.** In addition to the requirements of this Article, all registrants are subject to the requirements of Articles 1, 2, 4 and 10. Registrants engaged in industrial radiographic operations are subject to the requirements of Article 11, and registrants engaged in the healing arts are subject to the requirements of Article 6 of this Chapter. Registrants using a particle accelerator for the production of radioactive material are subject to the requirements of Article 3, and if the radioactive material is used for medical purposes, Article 7.

### **R9-7-902. Definitions**

The following definitions apply in this Article, unless the context otherwise requires:

“Added filter” (See Article 6)

“Arc therapy” means radiation therapy that uses electrons to treat large, superficial volumes that follow curved surfaces, as in postmastectomy patients.

“Authorized medical physicist” means an individual who meets the requirements in R9-7-711. For purposes of ensuring that personnel are adequately trained, an authorized medical physicist is a “qualified expert” as defined in Article 1.

“Beam-limiting device” (See Article 6)

“Beam-monitoring system” means a system of devices that will monitor the useful beam during irradiation and terminate irradiation when a preselected number of monitor units has been accumulated.

“Control panel” (See Article 6)

“Full beam detector” means a radiation detector of such size that the total cross section of the maximum size useful beam is intercepted.

“Gantry” means that part of a linear accelerator that supports the radiation source so that it can rotate about a horizontal axis.

“Interlock” (See Article 1)

“Isocenter” means the point of intersection of the collimator axis and the axis of rotation of the gantry.

“Monitor unit” means a unit response from the beam monitoring system from which the absorbed dose can be calculated.

“Moving beam therapy” means radiation therapy in which there is displacement of the useful beam relative to the patient. Moving beam therapy includes arc therapy, skip therapy, and rotational beam therapy.

“Rotational beam therapy” means radiation therapy that is administered to a patient from a radiation source that rotates around the patient’s body or the patient is rotated while the beam is held fixed.

“Skip therapy” means rotational beam therapy that is administered in a way that maximizes the dose to an area of interest and minimizes the dose to surrounding healthy tissue.

“Spot check” (See Article 6)

“Stationary beam therapy” means radiation therapy that involves a beam from a radiation source that is aimed at the patient from different directions. The distance of the source from the isocenter remains constant irrespective of the beam direction.

“Virtual source” means a point from which radiation appears to originate.

**R9-7-903. General Registration Requirements**

- A. The requirements in this Section supplement the registration requirements in 9 A.A.C. 7, Article 2.
- B. The Department shall approve a registration application for use of a particle accelerator only if the Department determines that:
  - 1. The applicant is qualified by training and experience to use the accelerator for the purpose in the application submitted to the Department under Article 2;
  - 2. The applicant’s proposed equipment, facilities, and operating and emergency procedures are adequate to protect public health;
  - 3. The applicant satisfies any other applicable requirements in this Section; and 4. The applicant has appointed a radiation safety officer.

**R9-7-904. Registration of Particle Accelerators Used in the Practice of Medicine**

- A. The requirements in this Section supplement the registration requirements in R9-7-903.
- B. An applicant that is a “medical institution,” as defined in 9 A.A.C. 7, Article 7, and performing human research shall appoint a radiation safety committee that meets the following requirements:
  - 1. The committee shall consist of at least four individuals and shall include:
    - a. An authorized user of each type of use permitted by the registration,
    - b. The Radiation Safety Officer,
    - c. A representative of the nursing service, and

- d. A representative of management who is neither an authorized user nor a Radiation Safety Officer, and
    - e. Any other members the registrant selects;
  2. The committee shall meet at least once in each 12-month period, unless otherwise specified by registration condition;
  3. To conduct business at least 50 percent of the membership of the committee shall be present including the Radiation Safety Officer and the management representative;
  4. The minutes of each radiation safety committee meeting shall include a reference of any discussion or documents related to the review required in R9-7-407(C);
  5. Review the radiation safety program for all sources of radiation as required in R9-7-407(C);
  6. Establish a table that contains investigational levels for occupational and public dose that, when exceeded, will initiate an investigation and consideration of actions by the Radiation Safety Officer; and
  7. Establish the safety objectives of the quality management program required by subsection (E).
- C. The applicant shall ensure that an individual designated as an authorized user is an Arizona licensed physician; approved by the radiation safety committee, if applicable; and is:
  1. Certified in:
    - a. Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or
    - b. Radiation oncology by the American Osteopathic Board of Radiology; or
    - c. Radiology, with specialization in radiotherapy, as a British “Fellow of the Faculty of Radiology” or “Fellow of the Royal College of Radiology”; or
    - d. Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or
  2. Engaged in the active practice of therapeutic radiology, and has completed 200 hours of instruction in basic techniques applicable to the use of a particle accelerator, 500 hours of supervised work experience, and a minimum of three years of supervised clinical experience.
    - a. To satisfy the requirement for instruction, the classroom and laboratory training shall include all of the following subjects:
      - i. Radiation physics and instrumentation,
      - ii. Radiation protection,

- iii. Mathematics pertaining to the use and measurement of radiotherapy, and
    - iv. Radiation biology.
  - b. To satisfy the requirement for supervised work experience, training shall occur under the supervision of an authorized user at a medical institution and shall include:
    - i. Reviewing full calibration measurements and periodic spot checks,
    - ii. Preparing treatment plans and calculating treatment times,
    - iii. Using administrative controls to prevent misadministration,
    - iv. Implementing emergency procedures to be followed in the event of the abnormal operation of a particle accelerator, and
    - v. Checking and using survey meters.
  - c. To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:
    - i. Examining individuals and reviewing their case histories to determine their suitability for treatment, noting any limitations or contraindications;
    - ii. Selecting the proper dose and how it is to be administered;
    - iii. Calculating the therapy doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses, as warranted by patients' or human research subjects' reaction to radiation; and
    - iv. Post-administration follow up and review of case histories.
- D.** With the application the applicant shall provide the name of each authorized user to the Department so the names can be listed on the registration form, and so that the Department can determine whether the authorized user's training and experience satisfies the requirements in subsection (C).
- E.** Each registrant shall establish and maintain a written quality management program to provide high confidence that the radiation produced by the particle accelerator will be administered as

directed by an authorized user. The quality management program shall include, at minimum, the tests and checks listed in Appendix A.

- F. Each registrant shall ensure that a particle accelerator is calibrated by an authorized medical physicist who meets the training and experience qualifications in R9-7-711.
- G. At the time of application for registration or when a therapy program is expanded to multiple sites, each applicant or registrant shall provide the Department with a description of the quality management program, a listing of the professional staff assigned to the facility, and the expected ratio of patient workload to staff member for programs involving multiple therapy sites. If the staffing ratio exceeds the recommended levels in Radiation Oncology in Integrated Cancer Management, Report of the Inter-Society Council for Radiation Oncology, December 1991, the applicant shall provide to the Department for approval the justification for the larger ratio and the safety considerations that have been addressed in establishing the program. This report is incorporated by reference and available under R9-7-101. The incorporated material contains no future editions or amendments. The report is available from the American Association of Physicists in Medicine: online at <http://www.aapm.org/pubs/reports>; print copies may be purchased from Medical Physics Publishing, 4513 Vernon Blvd., Madison, WI 53705; toll free at (800) 442-5778.

**R9-7-905. Medical Particle Accelerator Equipment, Facility and Shielding, and Spot Checks**

- A. Equipment
  - 1. Leakage radiation
    - a. Xray leakage radiation from the source housing assembly shall not exceed 0.1 percent of the maximum dose equivalent rate of the unattenuated useful beam.
    - b. Neutron leakage radiation from the source housing assembly shall not exceed 0.5 percent of the maximum dose equivalent rate of the unattenuated useful beam.
    - c. Leakage radiation measurements made at any point 1 meter from the path of the charged particle between its point of origin and the target, window or scattering foil shall meet the requirements of subsection (A)(1)(a) and (b) when computed as a percentage of the dose rate equivalent of the unattenuated useful beam measured at 1 meter from the virtual source. Leakage radiation measurements at each point shall be averaged over an area up to but not exceeding 100 square centimeters (15.5 square inches).
    - d. The registrant shall maintain, for inspection by the Department, records that show leakage radiation measurements for the life of the operation.

2. Beam limiting devices (not to include blocks or wedges). Adjustable or interchangeable beam limiting devices shall be provided and shall transmit no more than 2 percent of the useful beam for the portion of the useful beam that is to be attenuated by the beam limiting device. The neutron component of the useful beam shall not be included in this requirement. Measurements shall be averaged over an area up to but not exceeding 100 square centimeters (15.5 square inches) at the normal treatment distance.
3. Filters. The following requirements apply to systems that use a system of wedge filters, interchangeable field flattening filters, or interchangeable beam scattering filters:
  - a. Irradiation shall not be possible until a selection of a filter has been made at the treatment control panel;
  - b. An interlock system shall be provided to prevent irradiation if the filter selected is not in the correct position;
  - c. An indication of the wedge filter orientation with respect to the treatment field shall be provided at the control panel, by direct observation, or by electronic means, when wedge filters are used;
  - d. A display shall be provided at the treatment control panel showing the filter or filters in use;
  - e. Each filter that is removable from the system shall be clearly identified as to that filter's material of construction, thickness, and the nominal wedge angle for wedge filters, or a record tracing these factors for each filter shall be maintained at the system console; and
  - f. An interlock shall be provided to prevent irradiation if any filter selection operation carried out in the treatment room does not agree with the filter selection operation carried out at the treatment control panel.
4. Beam monitor. Equipment installed after the effective date of this Section shall be provided with at least one radiation detector in the radiation head. This detector shall be incorporated into a primary system so that all of the following criteria are met:
  - a. Each primary system shall have a detector that is a transmission detector and a full beam detector and that is placed on the patient side of any fixed added filters other than a wedge filter;
  - b. The detectors shall be removable only with tools and shall be interlocked to prevent incorrect positioning;
  - c. Each detector shall be capable of independently monitoring and controlling the useful beam;

- d. Each detector shall form part of a dose-monitoring system from which the absorbed dose can be calculated at a reference point in the treatment volume;
- e. Each dose monitoring system shall have a legible display at the treatment control panel that:
  - i. Maintains a reading until intentionally reset to zero;
  - ii. Has only one scale and no scale multiplying factors in replacement equipment; and
  - iii. Utilizes a design such that increasing dose is displayed by increasing numbers and is designed so that, in the event of an overdosage of radiation, the absorbed dose may be accurately determined under all nominal conditions of use or foreseeable failures;
- f. In the event of power failure, the dose monitoring information required in subsection (A)(4) displayed at the control panel at the time of failure shall be retrievable in at least one system; and
- g. Selection and display of dose monitor units;
  - i. Irradiation shall not be possible until a selection of dose monitor units has been made at the treatment control panel.
  - ii. Each primary system shall terminate irradiation when the preselected number of dose monitor units has been detected by the system.
  - iii. Each secondary system shall terminate irradiation when 110 percent of the preselected number of dose monitor units has been detected by the system.
  - iv. It shall be possible to interrupt irradiation and equipment movements at any time from the operator's position at the treatment control panel. Following an interruption, it shall be possible to restart irradiation by operator action without any reselection of operating conditions. If any change is made of a preselected value during an interruption the equipment shall go to termination condition.
  - v. It shall be possible to terminate irradiation and equipment movements, or go from an interruption condition to termination conditions at any time from the operator's position at the treatment control panel.
- 5. Beam monitoring system. All accelerator systems shall be provided with a beam monitoring system in the radiation head capable of monitoring and terminating irradiation.

- a. Each beam monitoring system shall have a display at the treatment control panel that registers the accumulated monitor units.
  - b. The beam monitoring system shall terminate irradiation if the preselected number of monitor units has been detected by the system.
  - c. For units with a secondary beam monitoring system, the primary beam monitoring system shall terminate irradiation if the preselected number of monitor units has been detected. The secondary beam monitoring system shall terminate irradiation if the primary system fails.
  - d. In the event of a power failure, the display information required in subsection (A)(5)(a) shall be retained in at least one system following the power failure.
  - e. An interlock device shall prevent irradiation if any beam monitoring system is inoperable.
  - f. For purposes of this rule:
    - i. “Beam monitoring system” means a system of devices that will monitor the useful beam during irradiation and will terminate irradiation if a preselected number of monitor units is accumulated.
    - ii. “Monitor unit” means a unit response from the beam monitoring system from which the absorbed dose can be calculated.
6. Treatment beam mode selection. In equipment capable of both xray and electron therapy:
- a. Irradiation shall not be possible until a selection of radiation type is made at the treatment control panel;
  - b. An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations indicated at the treatment control panel;
  - c. An interlock system shall be available and in operating condition on a therapy machine, and shall be used to prevent unwanted x-ray or electron irradiation when preparing for, or performing radiation therapy procedures. The interlock system need not be available for use, if the therapy machine is only used to make an image of an inanimate object; and
  - d. The radiation type selected shall be displayed at the treatment control panel before and during irradiation.
7. Treatment beam energy selection. Equipment capable of generating radiation beams of different energies shall meet all of the following requirements:

- a. Irradiation shall not be possible until a selection of energy is made at the treatment control panel;
  - b. An interlock system shall be provided to ensure that the equipment can emit only the energy of radiation that is selected;
  - c. An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations indicated at the treatment control panel; and
  - d. The energy selected shall be displayed at the treatment control panel before and during irradiation.
8. Selection of stationary or moving beam therapy. Equipment capable of both stationary and moving beam therapy modes shall meet all of the following requirements:
- a. Irradiation shall not be possible until a selection of stationary beam therapy or moving beam therapy is made at the treatment control panel;
  - b. An interlock system shall be provided to ensure that the equipment can operate only in the mode that is selected;
  - c. An interlock system shall be provided to prevent irradiation if any selected operations carried out in the treatment room do not agree with the selected operations indicated at the treatment control panel;
  - d. An interlock system shall be provided to terminate irradiation if the movement stops during moving beam therapy;
  - e. Moving beam therapy shall be so controlled that the required relationship between the number of dose monitor units and movement is obtained; and
  - f. The mode of operation shall be displayed at the treatment control panel.
9. Focal spot location and beam orientation. The registrant shall determine, or obtain from the manufacturer, the location in reference to an accessible point on the radiation head of all of the following:
- a. The xray target or the virtual source of x-rays,
  - b. The electron window or the scattering foil, and
  - c. All possible orientations of the useful beam.
10. System checking facilities. Capabilities shall be provided for checking of all safety interlock systems.

**B. Facility and shielding requirements.**

1. In addition to protective barriers sufficient to ensure compliance with R9-7-907, all of the following design requirements apply:

- a. Except for entrance doors or beam interceptors, all the required barriers shall be fixed barriers;
  - b. The treatment control panel shall be located outside the treatment room;
  - c. Windows, mirrors, operable closedcircuit television, or other equivalent viewing systems shall be provided to permit continuous observation of the patient during irradiation and shall be so located that the operator may observe the patient from the treatment control panel;
  - d. Provision shall be made for two-way oral communication between the patient and the operator at the treatment control panel;
  - e. Each point of entry into the treatment room shall be provided with warning lights that will indicate when the useful beam is “on” in a readily observable position outside of the room; and
  - f. Interlocks shall be provided and shall result in all entrance doors being closed before treatment can be initiated or continued. If the radiation beam is interrupted by any door opening, it shall be possible to restore the machine to operation only by closing the door and reinitiating exposure by manual action at the control panel.
2. An authorized medical physicist, trained and experienced in the principles of radiation protection, shall perform a radiation protection survey on all installations before human use and after any change in an installation that might produce a radiation hazard. The authorized medical physicist shall provide the survey results in writing to the individual in charge of the installation and transmit a copy of the survey results to the Department.
  3. Calibrations.
    - a. Calibration of the therapy system, including radiation output calibration, shall be performed before placing new installations into operation for the purpose of irradiation of patients. Subsequent calibrations shall be made at intervals not to exceed 12 months, and after any change that may cause the calibration of the therapy system to change.
    - b. Calibration of the radiation output of the therapy beam shall be performed with an instrument that has been calibrated using a method that is traceable to the National Institute of Standards and Technology (NIST), within the preceding two years.
    - c. Calibration of a particle accelerator shall be performed by, or under the supervision of an authorized medical physicist who meets the qualification

requirements specified in R9-7-711, and a copy of the calibration report shall be maintained by the registrant for inspection by the Department.

- d. Calibration of the therapy beam shall include, but not necessarily be limited to, all of the following determinations:
  - i. Verification that the equipment is operating within the design specifications concerning the light localizer, the side light and back pointer alignment with the isocenter, when applicable, variation in the axis of rotation for the table, gantry and jaw system, and beam flatness and symmetry at specific depths;
  - ii. The exposure rate or dose rate in air or at various depths of water for the range of field sizes used for each effective energy, and for each treatment distance used for radiation therapy;
  - iii. The congruence between the radiation field and the field defined by the localizing device;
  - iv. The uniformity of the radiation field and its dependency upon the direction of the useful beam; and
  - v. The calibration determinations above shall be provided in sufficient detail, to allow the absorbed dose to tissue in the useful beam to be calculated to within plus or minus 5 percent.
- e. Records of calibrations shall be maintained for three years following the date the calibration was performed.
- f. A copy of the current calibration report shall be available in the therapy facility for use by the operator, and the report shall contain the following information:
  - i. The action taken by the authorized medical physicist performing the calibration if it indicates a change has occurred since the last calibration,
  - ii. A listing of the persons informed of the change in calibration results, and
  - iii. A statement as to the effect the change in calibration has had on the therapy doses prior to the current calibration finding.

**C. Spot checks.**

- 1. The spot check procedures shall be in writing and shall have been developed by an authorized medical physicist trained and experienced in performing calibrations.
- 2. The measurements taken during spot checks shall demonstrate the degree of consistency of the operating characteristics which can affect the radiation output of the system or the radiation dose delivered to a patient during a therapy procedure.

3. The written spot check procedure shall indicate the frequency at which tests or measurements are to be performed, not to exceed monthly.
4. The spot check procedure shall note conditions that require recalibration of the therapy system before further human irradiation.
5. Records of spot checks shall be maintained and available for inspection by the Department for three years following the spot check measurements. Records of spot checks not performed by an authorized medical physicist shall be signed by an authorized medical physicist within 15 days of the spot check.

**D. Operating procedures.**

1. Only the patient shall be in the treatment room during irradiation.
2. If a patient must be held in position during treatment only, mechanical supporting or restraining devices shall be used for this purpose.

**R9-7-906. Limitations**

**A.** A registrant shall not permit an individual to act as:

1. A particle accelerator operator of any type unless the individual:
  - a. Has received copies of and instruction in this Article and the registrant's operating and emergency procedures,
  - b. Demonstrates an understanding of the material, and
  - c. Has demonstrated competence in the use the particle accelerator, related equipment, and survey instruments that will be employed during the operation of the particle accelerator;
2. A medical particle accelerator operator unless the individual is certified as required in A.R.S. § 32-2811 or the operator meets the requirements in R9-7-603(B); or
3. An industrial particle accelerator operator unless the individual has been instructed in radiation safety.

**B.** A registrant shall provide either the Radiation Safety Committee or the Radiation Safety Officer with the authority to terminate operations at a particle accelerator facility if this is necessary to protect health and safety or property.

**C.** If equipment is capable of both stationary and moving beam therapy, the registrant shall ensure that:

1. Irradiation is not possible unless either stationary or moving beam therapy has been selected at the control panel,

2. An interlock is provided to ensure that the machine will operate only in the mode that has been selected,
3. An interlock is provided that terminates irradiation if the gantry fails to move properly during moving beam therapy,
4. A means is provided to prevent movement during stationary therapy, and
5. The mode of operation is displayed at the control panel.

**R9-7-907. Shielding and Safety Design**

- A. An authorized medical physicist experienced in the principles of radiation protection and installation design shall be consulted in the design of a particle accelerator installation and called upon to perform a radiation survey when the accelerator is first capable of producing radiation. The registrant shall provide a copy of the installation radiation survey to the Department before a Department inspection conducted according to R9-7-914.
- B. The registrant shall shield each particle accelerator installation with the primary and secondary protective barriers necessary to comply with R9-7-408 and R9-7-416.
- C. At the time of application for registration and before treatment of the first patient, the applicant shall provide to the Department a copy of an installation report, signed by the contractor who installed required shielding material recommended by the authorized medical physicist who performed the shielding calculations for the particle accelerator facility.
- D. As part of the annual radiation protection program review required in R9-7-407(C), the registrant shall document installed facility shielding and other radiation exposure controls, review patient workload, and note associated changes, if any, in public exposure that are the result of installed facility shielding, increased workload, and other radiation exposure controls in use at the time of the review.

**R9-7-908. Particle Accelerator Controls and Interlock Systems**

A registrant shall ensure that:

1. Instrumentation, readouts and controls on the particle accelerator control panel are clearly identified and easily discernible;
2. All entrances into the area that contains the particle accelerator room, target room, or other high radiation area, are provided with interlocks that shut down the machine if an entrance door is opened;

3. If an interlock system connected to an entrance door that provides access to the therapy suite has been tripped, it is not possible to resume operation of the particle accelerator by resetting the interlock switch at the entrance where it had been tripped;
4. Each safety interlock is on a circuit that allows it to operate independently of all other safety interlocks;
5. If possible, the interlock system is fail-safe in design, so that any defect or component failure in the interlock system prevents operation of the particle accelerator; and
6. A scram button or other emergency power cutoff switch is located and easily identifiable in the area that contains the particle accelerator. The registrant shall ensure that the scram button prevents persons from restarting the particle accelerator at the accelerator control panel without resetting the button or switch.

**R9-7-909. Warning Systems**

A registrant shall ensure that:

1. High radiation areas and entrances to the high radiation areas in medical facilities are equipped with a continuously-operating warning light system that operates when, and only when, radiation is produced;
2. High radiation areas and entrances to the high radiation areas in nonmedical facilities are equipped with an easily-observable flashing or rotating warning light system that operates when, and only when, radiation is produced;
3. High radiation areas associated with nonmedical particle accelerators have an audible warning device that is activated for 15 seconds before creation of the high radiation area; and the warning device is clearly discernible in all high radiation areas and all radiation areas; and
4. High radiation areas associated with any particle accelerator are posted according to R9-7-428 and R9-7-429.

**R9-7-910. Operating Procedures**

- A. A registrant shall secure from use a particle accelerator when it is not being used to prevent unauthorized use.
- B. A particle accelerator operator shall use the switch on the control panel to turn the accelerator beam on and off during normal operations. The safety interlock system may be used to turn off the accelerator beam in emergencies.

- C. A registrant shall ensure that all safety and warning systems, including interlocks, are tested for proper operation at intervals not to exceed three months, and maintain a record of each test for Department inspection for at least three years from the date of the test.
- D. A registrant shall keep current electrical circuit diagrams of a particle accelerator and the associated interlock systems, and maintain the diagrams for inspection by the Department.
- E. A registrant shall not bypass an interlock unless the by-pass is:
  - 1. Authorized in writing by the Radiation Safety Committee or Radiation Safety Office,
  - 2. Recorded in a permanent log with a notice of the by-pass posted at any affected interlock and at the control panel, and
  - 3. Terminated as soon as possible.
- F. A registrant shall maintain a copy of the current operating and emergency procedures at the particle accelerator control panel.

**R9-7-911. Radiation Surveys**

- A. The registrant shall ensure that a portable survey instrument is available at all times in a particle accelerator facility.
- B. An authorized medical physicist shall:
  - 1. Check the operation of the portable survey instrument required in subsection (A), using a known radiation source, before each use;
  - 2. Perform and document a radiation protection survey when changes have been made in shielding, operation, equipment, or occupancy of adjacent areas;
  - 3. For particle accelerator facilities greater than 30 Mev, establish a program of radiation protection surveys that will evaluate the airborne radiation hazards, and ensure that the particulate radioactivity present in the accelerator facility will not result in personnel exposure that exceeds the limits in Article 4; and
  - 4. Perform radiation protection surveys, including smear surveys of the particle accelerator facility, as prescribed in the written procedures established by the Radiation Safety Officer of the particle accelerator facility and approved by the Department at the time of application for registration.
- C. The registrant shall maintain the following records:
  - 1. Radiation protection surveys required in subsection (B)(2), and the associated facility description, required in R9-7-202, until the registration is terminated; and
  - 2. Records of the surveys required in subsections (B)(3) and (4) for three years following the measurement.

**R9-7-913. Misadministration**

**A.** For purposes of this rule “misadministration” means:

1. A therapeutic radiation dose from a machine:
  - a. Delivered to the wrong patient;
  - b. Delivered using the wrong mode of treatment;
  - c. Delivered to the wrong treatment site; or
  - d. Delivered in one week to the correct patient, using the correct mode, to the correct therapy site, but greater than 130 percent of the prescribed weekly dose;or
2. A therapeutic radiation dose from a machine with errors in the calibration, time of exposure, or treatment geometry that result in a calculated total treatment dose differing from the final, prescribed total treatment dose by more than 20 percent, except for treatments given in 1 to 3 fractions, in which case a difference of more than 10 percent constitutes a misadministration.

**B.** Reports of therapy misadministration

1. Within 24 hours after discovery of a misadministration, a registrant shall notify the Department by telephone. The registrant shall also notify the referring physician of the affected patient and the patient or a responsible relative or guardian, unless the referring physician personally informs the registrant either that he or she will inform the patient, or that in his or her medical judgment, telling the patient or the patient’s responsible relative or guardian would be harmful to one or the other, respectively. If the referring physician or the patient’s responsible relative or guardian cannot be reached within 24 hours, the registrant shall notify them as soon as practicable. The registrant shall not delay medical care for the patient because of notification problems.
2. Within 15 days following the verbal notification to the Department, the registrant shall report, in writing, to the Department and individuals notified under subsection (B)(1). The written report shall include the registrant’s name, the referring physician’s name, a brief description of the event, the effect on the patient, the action taken to prevent recurrence, whether the registrant informed the patient or the patient’s responsible relative or guardian, and if not, why not. The report shall not include the patient’s name or other information that could lead to identification of the patient.
3. Each registrant shall maintain records of all misadministrations for Department inspection. The records shall:

- a. Contain the names of all individuals involved in the event, including:
  - i. The physician,
  - ii. The allied health personnel,
  - iii. The patient,
  - iv. The patient's referring physician,
  - v. The patient's identification number if one has been assigned,
  - vi. A brief description of the event,
  - vii. The effect on the patient, and
  - viii. The action taken to prevent recurrence.
- b. Be maintained for three years beyond the termination date of the affected registration.

**R9-7-914. Initial Inspections of Particle Accelerators Used in the Practice of Medicine**

The Department shall inspect a particle accelerator, used in the practice of medicine, before its initial use to treat human disease.

**Appendix A. Quality Control Program**

**A. Mechanical Tests**

1. Patient support assembly motions,
2. Gantry angle indicators,
3. Optical distance indicators,
4. Alignment lights,
5. Congruence of radiation beam and light field,
6. Accuracy of field size indicators,
7. Mechanical isocenter-gantry and collimator,
8. Mechanical interlocks.

**B. Radiation Beam Tests**

1. Machine operating parameters,
2. Dose per monitor unit for x-ray and electron beams,
3. Dose per degree for moving beam therapy,
4. Radiation isocenter,
5. Flatness and symmetry,
6. Wedge transmission factors,
7. Shadow tray transmission factors,

8. Energy check on central axis,
  9. Radiation output versus field size.
- C. Control Panel Checks**
1. Radiation “ON” condition,
  2. Indicator lamp check,
  3. Computer control of accelerator,
  4. Interlock display,
  5. Digital display,
  6. Analog display,
  7. Status display,
  8. Reset display.
- D. Facility Checks**
1. Patient audio-visual communication,
  2. Entrance door interlock,
  3. Warning lights,
  4. Emergency off button.
- E. Dose Output Check**
1. Each registrant shall use the services of a third party authorized medical physicist or third party TLD system to verify the accelerator’s radiation output every two years.
  2. If the output check is not within plus or minus 5 percent of the calibrated output, the accelerator shall be recalibrated and the discrepancy investigated.
  3. Records of output checks shall be maintained for three years.
- F. Patient Dosimetry Calculation Checks**
1. Calculation of patient treatment times,
  2. Computer calculation of patient treatment times.

## Statutory Authority for Rules in 9 A.A.C. 7, Article 9

### **30-654. Powers and duties of the department**

A. The department may:

1. Accept grants or other contributions from the federal government or other sources, public or private, to be used by the department to carry out any of the purposes of this chapter.
2. Do all things necessary, within the limitations of this chapter, to carry out the powers and duties of the department.
3. Conduct an information program, including:
  - (a) Providing information on the control and regulation of sources of radiation and related health and safety matters, on request, to members of the legislature, the executive offices, state departments and agencies and county and municipal governments.
  - (b) Providing such published information, audiovisual presentations, exhibits and speakers on the control and regulation of sources of radiation and related health and safety matters to the state's educational system at all educational levels as may be arranged.
  - (c) Furnishing to citizen groups, on request, speakers and such audiovisual presentations or published materials on the control and regulation of sources of radiation and related health and safety matters as may be available.
  - (d) Conducting, sponsoring or cosponsoring and actively participating in the professional meetings, symposia, workshops, forums and other group informational activities concerned with the control and regulation of sources of radiation and related health and safety matters when representation from this state at such meetings is determined to be important by the department.

B. The department shall:

1. Regulate the use, storage and disposal of sources of radiation.
2. Establish procedures for purposes of selecting any proposed permanent disposal site located within this state for low-level radioactive waste.
3. Coordinate with the department of transportation and the corporation commission in regulating the transportation of sources of radiation.
4. Assume primary responsibility for and provide necessary technical assistance to handle any incidents, accidents and emergencies involving radiation or sources of radiation occurring within this state.
5. Adopt rules deemed necessary to administer this chapter in accordance with title 41, chapter 6.
6. Adopt uniform radiation protection and radiation dose standards to be as nearly as possible in conformity with, and in no case inconsistent with, the standards contained in the regulations of the United States nuclear regulatory commission and the standards of the United States public health service. In the adoption of the standards, the department shall consider the total occupational radiation exposure of individuals, including that from sources that are not regulated by the department.
7. Adopt rules for personnel monitoring under the close supervision of technically competent people in order to determine compliance with safety rules adopted under this chapter.
8. Adopt a uniform system of labels, signs and symbols and the posting of the labels, signs and symbols to be affixed to radioactive products, especially those transferred from person to person.
9. By rule, require adequate training and experience of persons utilizing sources of radiation with respect to the hazards of excessive exposure to radiation in order to protect health and safety.
10. Adopt standards for the storage of radioactive material and for security against unauthorized removal.
11. Adopt standards for the disposal of radioactive materials into the air, water and sewers and burial in the soil in accordance with 10 Code of Federal Regulations part 20.

12. Adopt rules that are applicable to the shipment of radioactive materials in conformity with and compatible with those established by the United States nuclear regulatory commission, the department of transportation, the United States treasury department and the United States postal service.
  13. In individual cases, impose additional requirements to protect health and safety or grant necessary exemptions that will not jeopardize health or safety, or both.
  14. Make recommendations to the governor and furnish such technical advice as required on matters relating to the utilization and regulation of sources of radiation.
  15. Conduct or cause to be conducted off-site radiological environmental monitoring of the air, water and soil surrounding any fixed nuclear facility, any uranium milling and tailing site and any uranium leaching operation, and maintain and report the data or results obtained by the monitoring as deemed appropriate by the department.
  16. Develop and utilize information resources concerning radiation and radioactive sources.
  17. Prescribe by rule a schedule of fees to be charged to categories of licensees and registrants of radiation sources, including academic, medical, industrial, waste, distribution and imaging categories. The fees shall cover a significant portion of the reasonable costs associated with processing the application for license or registration, renewal or amendment of the license or registration and the costs of inspecting the licensee or registrant activities and facilities, including the cost to the department of employing clerical help, consultants and persons possessing technical expertise and using analytical instrumentation and information processing systems.
  18. Adopt rules establishing radiological standards, personnel standards and quality assurance programs to ensure the accuracy and safety of screening and diagnostic mammography.
- C. All fees collected under subsection B, paragraph 17 of this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

### **30-657. Records**

- A. Each person that possesses or uses a source of radiation shall maintain records relating to its receipt, storage, transfer or disposal and such other records as the department requires by rule.
- B. The department shall require each person that possesses or uses a source of radiation to maintain appropriate records showing the radiation exposure of all individuals for whom personnel monitoring is required by rules adopted by the department. Copies of records required by this section shall be submitted to the department on request by the department.
- C. Any person that possesses or uses a source of radiation shall furnish to each employee for whom personnel monitoring is required a copy of the employee's personal exposure record at such times as prescribed by rules adopted by the department.
- D. Any person that possesses or uses a source of radiation, when requested, shall submit to the department copies of records or reports submitted to the United States nuclear regulatory commission regardless of whether the person is subject to regulation by the department. The department, by rule, shall specify the records or reports required to be submitted to the department under this subsection.

### **30-671. Radiation protection standards**

- A. Radiation protection standards in rules adopted by the department under this chapter do not limit the kind or amount of radiation that may be intentionally applied to a person or animal for diagnostic or therapeutic purposes by or under the direction of a licensed practitioner of the healing arts.
- B. Radiation sources shall be registered, licensed or exempted at the discretion of the department.

### **30-672. Licensing and registration of sources of radiation; exemptions**

- A. The department by rule shall provide for general or specific licensing of by-product, source, special nuclear materials or devices or equipment using those materials. The department shall require from the applicant satisfactory evidence that the applicant is using methods and techniques that are demonstrated to be safe and that the applicant is familiar with the rules adopted by the department under section 30-654, subsection B, paragraph 5 relative to uniform radiation standards, total occupational radiation exposure norms, labels, signs and symbols, storage, waste disposal and shipment of radioactive materials. The department may require that, before

it issues a license, the employees or other personnel of an applicant who may deal with sources of radiation receive a course of instruction approved by the department concerning department rules. The department shall require that the applicant's proposed equipment and facilities be adequate to protect health and safety and that the applicant's proposed administrative controls over the use of the sources of radiation requested be adequate to protect health and safety.

B. The department may require registration or licensing of other sources of radiation if deemed necessary to protect public health or safety.

C. The department may exempt certain sources of radiation or kinds of uses or users from the licensing or registration requirements set forth in this section if it finds that exempting such sources of radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

D. The director may suspend or revoke, in whole or in part, any license issued under subsection A of this section if the licensee or an officer, agent or employee of the licensee:

1. Violates this chapter or rules of the department adopted pursuant to this chapter.

2. Has been, is or may continue to be in substantial violation of the requirements for licensure of the radiation source and as a result the health or safety of the general public is in immediate danger.

E. If the licensee, or an officer, agent or employee of the licensee, refuses to allow the department or its employees or agents to inspect the licensee's premises, such an action shall be deemed reasonable cause to believe that a substantial violation under subsection D, paragraph 2 of this section exists.

F. A license may not be suspended or revoked under this chapter without affording the licensee notice and an opportunity for a hearing as provided in title 41, chapter 6, article 10.

G. The department shall not require persons who are licensed in this state to practice as a dentist, physician assistant, chiropractor or veterinarian or licensed in this state to practice medicine, surgery, osteopathic medicine, chiropractic or naturopathic medicine to obtain any other license to use a diagnostic x-ray machine, but these persons are governed by their own licensing acts.

H. Persons who are licensed by the federal communications commission with respect to the activities for which they are licensed by that commission are exempt from this chapter.

I. Rules adopted pursuant to this chapter may provide for recognition of other state or federal licenses as the department deems desirable, subject to such registration requirements as the department prescribes.

J. Any licenses issued by the department shall state the nature, use and extent of use of the source of radiation. If at any time after a license is issued the licensee desires any change in the nature, use or extent, the licensee shall seek an amendment or a new license under this section.

K. The department shall prescribe by rule requirements for financial security as a condition for licensure under this article. The department shall deposit all amounts posted, paid or forfeited as financial security in the radiation regulatory and perpetual care fund established by section 30-694.

L. Persons applying for licensure shall provide notice to the city or town where the applicant proposes to operate as part of the application process.

M. Any facility that provides diagnostic or screening mammography examinations by or under the direction of a person who is exempt from further licensure under subsection G of this section shall obtain certification by the department. The department shall prescribe by rule the requirements of certification in order to ensure the accuracy and safety of diagnostic and screening mammography.

### **30-673. Unlawful acts**

It is unlawful for any person to receive, use, possess, transfer, install or service any source of radiation unless the person is registered, licensed or exempted by the department in accordance with this chapter and rules adopted under this chapter.

### **36-136. Powers and duties of director; compensation of personnel; rules; definition**

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
  2. Perform all duties necessary to carry out the functions and responsibilities of the department.
  3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
  4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
  5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
  6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
  7. Prepare sanitary and public health rules.
  8. Perform other duties prescribed by law.
- B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.
- C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.
- D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.
- E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:
1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.
  2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions,

powers and duties in accordance with applicable standards of performance. Whenever in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for no longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fund-raising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) Baked and confectionary goods that are not potentially hazardous and that are prepared in a kitchen of a private home for commercial purposes if packaged with a label that clearly states the address of the maker, includes contact information for the maker, lists all the ingredients in the product and discloses that the product was prepared in a home. The label must be given to the final consumer of the product. If the product was made

in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must obtain a food handler's card or certificate if one is issued by the local county and must register with an online registry established by the department pursuant to paragraph 13 of this subsection. For the purposes of this subdivision, "potentially hazardous" means baked and confectionary goods that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for the preservation or storage of food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparation of food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public

nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare food for commercial purposes pursuant to paragraph 4 of this subsection.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. For the purposes of this section, "fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

**SCHOOL FACILITIES BOARD**

Title 7, Chapter 6, Articles 1, 2, 3, 5, 6, and 7, School Facilities Board



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 13, 2020

**SUBJECT: SCHOOL FACILITIES BOARD**  
Title 7, Chapter 6, Articles 1, 2, 3, 5, 6, and 7, School Facilities Board

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### Summary

This Five-Year Review Report (5YRR) from the School Facilities Board (SFB) relates to all rules in Title 7, Chapter 6, Articles 1-3 and 5-7. The rules reviewed provide guidance to the SFB in administering the new school facilities fund (*see* A.R.S. § 15-2041) and the building renewal grant fund (*see* A.R.S. § 15-2032). The rules ensure consistent and impartial administration of the funds as they fluctuate based on the annual appropriation and ensure taxpayer dollars are spent according to law. The rules also establish minimum requirements for school facilities, which ensure Arizona's children are educated in a safe environment.

In the prior 5YRR for these rules, approved by the Council on February 2, 2016, SFB indicated it would amend many of the rules to correct identified deficiencies. SFB will be completing its current rulemaking process by the end of the year and are planning a second rulemaking process in the next year to include new leadership at SFB as well as assess additional considerations post COVID-19.

### Proposed Action

SFB is currently in the process of updating the reviewed rules. SFB indicates there will be two rulemakings. First is an expedited rulemaking that will amend portions of Articles 1, 2,

and 7. The second rulemaking will use the regular procedure to amend all Articles in a manner that cannot be achieved with an expedited rulemaking. Pursuant to A.R.S. § 41-1056(B), SFB has included a copy of the Notice of Proposed Expedited Rulemaking and incorporated it into this report. The rulemaking docket was opened on July 7, 2019, the Notice of Proposed Expedited Rulemaking was posted to the SFB website, and SFB indicates it is their intention to submit the expedited rulemaking to the Council by the Council's September 22, 2020 deadline.

**1. Has the agency analyzed whether the rules are authorized by statute?**

Yes. SFB cites both general and specific statutory authority for these rules.

**2. Summary of the agency's economic impact comparison and identification of stakeholders:**

The rules provide guidance to the SFB as it administers the new school facilities fund and the building renewal grant fund to ensure schools meet the minimum adequacy standards.

An EIS was never prepared by the Board due to exemptions from Title 41. However, since the rules only provide guidance for schools to ensure they meet minimum adequacy standards, the economic impact of the rules has not changed significantly since their initial adoption.

The stakeholders include: the Board, schools, school districts, students, and local businesses.

**3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that the rules under review provide the least intrusive and least costly method of achieving the regulatory objective. The costs associated with the rules are outweighed by the benefits of ensuring Arizona's children are educated in a safe environment. Additionally, these funds benefit the state economy by providing revenue streams necessary to build new schools, and allow school districts to perform maintenance that helps extend the useful life of a facility.

The Department intends to make changes to rules to provide additional clarity on requirements for schools to maintain minimum standards.

**4. Has the agency received any written criticisms of the rules over the last five years?**

SFB indicates it has not received any written criticisms of the rules in the last five years.

**5. Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

SFB indicates that the current rulemaking process identified that many of the rules are not clear, concise, and understandable. Additionally, SFB indicates the rules are also, in part, inconsistent with current rulemaking standards and agency practice. SFB also indicates the rules in Article 7 are unnecessarily duplicative of those in Article 2. SFB states the Notice of Proposed Expedited Rulemaking, included with this report, which will be submitted to the Council in the near future summarizes the amendments addressing these issues.

SFB indicates that the rules are consistent with other rules and statutes and are generally effective in achieving their underlying regulatory objective. However, SFB also indicates it believes the rules will be more effective when updated consistent with industry standards and current best practices.

**6. Has the agency analyzed the current enforcement status of the rules?**

SFB indicates that rules in the following Articles are enforced as written:

- Article 1. Definitions
- Article 2. Minimum School Facility Guidelines
- Article 3. Square Footage Calculations

However, SFB indicates that some subsections of Article 5. New School and Land Funding and Article 6. Contingency Funds are not in complete alignment with accepted agency practice. SFB states those incongruities have been identified by rulemaking processes that were attempted over the past 10 years but have not been changed. SFB indicates the need for the amendments contained in those prior rulemaking attempts still exists.

SFB indicates that Article 7. Minimum School Facility Guidelines for the Arizona State Schools for the Deaf and Blind (ASDB) is enforced by the SFB as written, in partnership with the ASDB.

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

SFB indicates that the rules are not more stringent than federal law. SFB identifies numerous federal laws related to education including Title IX of the U.S. Education Amendments of 1972; Title VI of the Civil Rights Act of 1964; and the Individuals with Disabilities Act. SFB notes a focus of these federal laws is ensuring the right to a free and high-quality education and equity in education. SFB states only the Individuals with Disabilities Act directly impacts school facilities. SFB indicates the rules reviewed ensure equity by requiring school facilities to make accommodations for individuals with disabilities (See in particular R7-6-216 and R7-6-716).

**8. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. SFB indicates none of the rules reviewed were adopted after July 29, 2010 and none require issuance of a permit, license, or agency authorization.

## **9. Conclusion**

SFB indicates that many of the rules are not clear, concise, and understandable. Additionally, SFB indicates the rules are also, in part, inconsistent with current rulemaking standards and agency practice. SFB also indicates the rules in Article 7 are unnecessarily duplicative of those in Article 2. Furthermore, SFB states that some subsections of Article 5. New School and Land Funding and Article 6. Contingency Funds are not in complete alignment with accepted agency practice.

SFB is currently in the process of updating the reviewed rules. SFB indicates there will be two rulemakings. First is an expedited rulemaking that will amend portions of Articles 1, 2, and 7. The second rulemaking will use the regular procedure to amend all Articles in a manner that cannot be achieved with an expedited rulemaking. Pursuant to A.R.S. § 41-1056(B), SFB has included a copy of the Notice of Proposed Expedited Rulemaking and incorporated it into this report. The rulemaking docket was opened on July 7, 2019, the Notice of Proposed Expedited Rulemaking was posted to the SFB website, and SFB indicates it is their intention to submit the expedited rulemaking to the Council by the Council's September 22, 2020 deadline.

Council staff recommends approval of this report.

Douglas A. Ducey  
Governor



Andrew Tobin  
Director

**ARIZONA DEPARTMENT OF ADMINISTRATION**

OFFICE OF THE DIRECTOR  
100 NORTH FIFTEENTH AVENUE • SUITE 403  
PHOENIX, ARIZONA 85007  
(602) 542-1500

June 23, 2020

**VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)**

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

**RE: School Facilities Board, Title 7, Chapter 6, Articles 1-3 and 5-7, Five Year Review Report**

Dear Ms. Sornsin:

The School Facilities Board submits the attached Five-year-review Report of A.A.C. Title 7, Chapter 6, Articles 1-3, and 5-7 for Council's review and approval. The report is due under an extension at the end of June 2020.

The School Facilities Board certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact Mr. Nick Loper, Executive Consultant, at (602) 620-4868 or [nick.loper@azdoa.gov](mailto:nick.loper@azdoa.gov).

Sincerely,

  
[Andrew Tobin \(Jun 15, 2020 15:57 PDT\)](#)

Andrew Tobin  
Director

# School Facilities Board

## 5 YEAR REVIEW REPORT

### A.A.C. Title 7, Chapter 6

June 2020

The School Facilities Board (SFB) is currently updating the reviewed rules. There will be two rulemakings. First is an expedited rulemaking that will amend portions of Articles 1, 2, and 7. The second rulemaking will use the regular procedure to amend all Articles in a manner that cannot be achieved with an expedited rulemaking. These rulemaking processes have informed this review and report. A copy of the Notice of Expedited Proposed Rulemaking is attached and incorporated into this report.

1. **Authorization of the rule by existing statutes**

All rules made by the SFB are generally authorized by A.R.S. § § 41-1001.01, 41-1003, 15-2002(A)(7), 15-2002(A)(11), and 15-2022.

A.R.S. § 15-2011(F) provides specific authority to the SFB to establish and administer minimum standards for all Arizona public school district facilities and A.R.S. § 15-2002(A)(11) provides specific authority regarding the Arizona State Schools for the Deaf and Blind (ASDB).

2. **The objective of each rule:**

<b>Article 1. Definitions</b>	
<b>Rule / Title</b>	<b>Objective</b>
<b>R7-6-101</b> Definitions	Informs local school districts and the public of the meaning of key terms used by the Board regarding school facilities.
<b>R7-6-102</b>	Repealed effective June 7, 2001
<b>Article 2. Minimum School Facility Guidelines</b>	
<b>Rule / Title</b>	<b>Objective</b>
<b>R7-6-201</b> Applications	Informs local school districts and the public of the situations in which the minimum school facility guidelines are a requirement.
<b>R7-6-202 through 204</b>	Reserved
<b>R7-6-205</b> School Site	Informs local school districts and the public of the minimum guidelines regarding school sites.
<b>R7-6-206 through 209</b>	Reserved

<b>R7-6-210</b> Academic Classroom Space	Informs local school districts and the public of the various square footage requirements by grade configuration.
<b>R7-6-211</b> Classroom Fixtures and Equipment	Informs local school districts and the public of general requirements related to seating, desk surfaces, and storage in general and specialty classrooms.
<b>R7-6-212</b> Classroom Lighting	Informs local school districts and the public of the general requirements related to lighting levels and how to measure those levels.
<b>R7-6-213</b> Classroom Temperature	Informs the local school districts and public of the general requirements related to acceptable temperature ranges and how to measure the temperature level.
<b>R7-6-214</b> Classroom Acoustics	Informs local school districts and the public of the general requirements related to background sound levels and how to measure those levels.
<b>R7-6-215</b> Classroom Air Quality	Informs local school districts and the public of the general requirements related to maximum allowable carbon dioxide levels and how to measure those levels.
<b>R7-6-216</b> Education Classroom Facilities for Disabled Students	Informs local school districts and the public of the general requirements related to space and access to space for disabled students.
<b>R7-6-217 through 219</b>	Reserved
<b>R7-6-220</b> Library and Media Centers/ Research Area	Informs local school districts and the public of the specific requirements related to the equipment, books, and furniture.
<b>R7-6-221</b> Equipment for Libraries and Media Centers/Research Area	Informs local school districts and the public of the minimum adequacy standards for equipment, books, and other resources required for school libraries and media centers.
<b>R7-6-222 through 224</b>	Reserved
<b>R7-6-225</b> Cafeterias	Informs local school districts and the public of the general requirement for space available on a regular basis where students can eat within the school site.
<b>R7-6-226</b> Food Service	Informs local school districts and the public of the general criteria and functional requirements for food service activities.
<b>R7-6-227</b> Equipment List for Food Service	Informs local school districts and the public of the specific fixture and equipment requirements for food service.

<b>R7-6-228 and 229</b>	Reserved
<b>R7-6-230</b> Auditoriums, Multipurpose Rooms, or Other Multi Use Space	Informs local school districts and the public of the general requirements related to student assembly space and how to measure that space.
<b>R7-6-231 through 234</b>	Reserved
<b>R7-6-235</b> Technology	Informs local school districts and the public of the minimum adequacy requirements related to information technology equipment and software.
<b>R7-6-236 through 239</b>	Reserved
<b>R7-6-240</b> Transportation	Informs local school districts and the public of the replacement standards for pupil transportation vehicles.
<b>R7-6-241 through 244</b>	Reserved
<b>R7-6-245</b> Science Facilities	Informs local school districts and the public of the general square footage minimum requirements for space devoted to practical science instruction.
<b>R7-6-246</b> Equipment List for Science Facilities	Informs local school districts and the public of minimum adequacy requirements regarding specific fixtures and equipment necessary for practical science instruction.
<b>R7-6-247</b> Art Facilities	Informs local school districts and the public of the general and specific minimum adequacy square footage requirements for space devoted to art education programs.
<b>R7-6-248</b> Vocational Education Facilities	Informs local school districts and the public of the general and specific square footage requirements to provide space for vocational education programs.
<b>R7-6-249</b> Physical Education and Comprehensive Health Program Facilities	Informs local school districts and the public of the general and specific square footage requirements for space devoted to physical education and comprehensive health programs.
<b>R7-6-250</b> Equipment List for Physical Education	Informs local school districts and the public of the specific fixture and equipment requirements for physical education.
<b>R7-6-251</b> Alternate Delivery Method	Informs local school districts and the public of the local governing board approval requirements regarding use of alternative delivery methods for instruction in art, science, or vocational education.
<b>R7-6-252 through 254</b>	Reserved

<b>R7-6-255</b> Parent Work Space	Informs local school districts and the public of the general and specific square footage requirements for parent work space.
<b>R7-6-256</b> Two-way Internal Communication System	Informs local school districts and the public of the minimum adequacy requirements for an internal communication system.
<b>R7-6-257</b> Fire Alarm	Informs local school districts and the public of the requirement to provide a fire alarm system that is approved by the State Fire Marshal.
<b>R7-6-258</b> Administrative Space	Informs local school districts and the public of the general and specific requirements for providing types of administrative space in a school facility.
<b>R7-6-259</b>	Reserved
<b>R7-6-260</b> Laws and Building Codes	Informs local school districts and the public of the general requirement to conform to applicable laws and building codes, and specifies the 1997 Uniform Building Code (UBC) as the minimum code compliance level.
<b>R7-6-261</b> Energy Saving Measures	Informs local school districts and the public of the ability to provide energy conservation upgrades under certain conditions.
<b>R7-6-262 through 264</b>	Reserved
<b>R7-6-265</b> Building Systems	Informs local school districts and the public of the qualities for a building system to be considered in working order and capable of being maintained.
<b>R7-6-266 through 269</b>	Reserved
<b>R7-6-270</b> Building Structural Soundness	Informs local school districts and the public of the qualities required of a building's structural systems for it to be considered structurally sound.
<b>R7-6-271</b> Exterior Envelope, Interior Surfaces and Interior Finishes	Informs local school districts and the public of the qualities for the exterior envelope, interior surfaces, and finishes to be considered safe and capable of being maintained.
<b>R7-6-272 through 274</b>	Reserved
<b>R7-6-275</b> Minimum Gross Square Footage	Informs local school districts and the public of the general requirement to provide minimum adequate gross square footage by school district.
<b>R7-6-276</b> Assessment of Minimum Gross Square Footage	Informs local school districts and the public of the specific requirements to provide per pupil square footage according to various grade levels.

<b>R7-6-277 through 284</b>	Reserved
<b>R7-6-285</b> Guidelines Exception	Informs local school districts and the public of the ability of the Board to grant an exception that will still meet guideline requirements.
<b>Article 3. Square Footage Calculations</b>	
<b>Rule / Title</b>	<b>Objective</b>
<b>R7-6-301</b> Square Footage Calculations	Informs local school districts and the public of the calculation methodology to be used to determine SFB funding levels in cases where a school district has either Class (A) or Class (B) bond funding available.
<b>R7-6-302</b> Modification of Square Footage for Geographic Factors	Informs local school districts and the public of the specific requirements to provide per pupil square footage according to various grade configurations.
<b>Article 4. Expired</b>	
<b>Article 5. New School and Land Funding</b>	
<b>Rule / Title</b>	<b>Objective</b>
<b>R7-6-501</b> Capital Plans	Informs school districts that the SFB requires them to submit a capital plan to show their need for a new school or an addition to an existing school within the next four years or for additional land within the next ten years.
<b>R7-6-502</b> Funding for New Schools or Additional Square Footage	Informs school districts and the public of the process and requirements for receiving funding for new schools or additional square footage to existing school facilities.
<b>R7-6-503</b> Funding for Land	Informs local school districts and the public of the specific steps involved in the approval and payment for land purchases for new school sites.
<b>R7-6-504</b> Donations of Real Property	Informs local school districts and the public of the specific steps involved in the approval of and compensation for land donations for new school sites.
<b>R7-6-505</b> Constructing Bond-Funded Schools on Land Funded by the School Facilities Board	Informs local school districts and the public of the ability and requirements of the Board to provide funding for land used as sites for Class (A) and Class (B) bond-funded schools.
<b>R7-6-506</b> Providing Technical Assistance in the Form of Project Management	Informs local school districts and the public of the ability and requirements of the Board in providing funding for project management.

<b>R7-6-507 through 511</b>	Reserved
<b>Article 6. Contingency Funds</b>	
<b>Rule / Title</b>	<b>Objective</b>
<b>R7-6-601</b> Allocation and Use of Contingency Monies	Informs local school districts and the public of the requirement and steps for use of contingency monies in new school and deficiencies correction construction.
<b>Article 7. Minimum School Facility Guidelines for the Arizona State Schools for the Deaf and Blind (ASDB)</b>	
<b>Rule / Title</b>	<b>Objective</b>
<b>R7-6-701</b> Applications	Informs the ASDB and the public that there are separate minimum facility guidelines for the Arizona State Schools for the Deaf and Blind, and deficiency corrections projects are subject to legislative funding.
<b>R7-6-702 through 704</b>	Reserved
<b>R7-6-705</b> School Site	Informs the ASDB and the public of the criteria related to physical siting.
<b>R7-6-706 through 709</b>	Reserved
<b>R7-6-710</b> Academic Classroom Space	Informs the ASDB and the public of the various square footage criteria requirements by grade level.
<b>R7-6-711</b> Classroom Fixtures and Equipment	Informs the ASDB and the public of the general requirements related to seating, writing surfaces, storage, and specialty equipment for general and specialty classrooms.
<b>R7-6-712</b> Classroom Lighting	Informs the ASDB and the public of the general requirements related to lighting levels and how to measure those levels.
<b>R7-6-713</b> Classroom Temperature	Informs the ASDB and public of the general requirements related to acceptable temperature ranges and how to measure the temperature.
<b>R7-6-714</b> Classroom Acoustics	Informs the ASDB and the public of the general requirements related to background sound levels and how to measure those levels.
<b>R7-6-715</b> Classroom Air Quality	Informs the ASDB and the public of the general requirements related to maximum allowable carbon dioxide levels and how to measure those levels.
<b>R7-6-716</b> Education Classroom Facilities for Disabled Students	Informs the ASDB and the public of the general requirements related to space and access to space for disabled students.

<b>R7-6-717 through 719</b>	Reserved
<b>R7-6-720</b> Library and Media Centers/ Research Area	Informs the ASDB and the public of the specific requirements related to equipment, books, and furniture.
<b>R7-6-721</b> Equipment for Libraries and Media Centers/Research Area	Informs the ASDB and the public of the minimum adequacy standards for equipment, books, and other resources required for school libraries and media centers.
<b>R7-6-722 through 724</b>	Reserved
<b>R7-6-725</b> Cafeterias	Informs the ASDB and the public of the general requirement for space available on a regular basis where students can eat within the school site.
<b>R7-6-726</b> Food Service	Informs the ASDB and the public of the general criteria and functional requirements for food service activities.
<b>R7-6-727</b> Equipment List for Food Service	Informs the ASDB and the public of the specific fixture and equipment requirements for food service.
<b>R7-6-728 and 729</b>	Reserved
<b>R7-6-730</b> Auditoriums, Multipurpose Rooms, or Other Multi Use Space	Informs the ASDB and the public of the general requirements related to student assembly space and how to measure that space.
<b>R7-6-731 through 734</b>	Reserved
<b>R7-6-735</b> Technology	Informs the ASDB and the public of the general minimum adequacy requirements related to information technology equipment and software.
<b>R7-6-736 through 739</b>	Reserved
<b>R7-6-740</b> Transportation	Informs the ASDB and the public of the replacement standards for pupil transportation vehicles.
<b>R7-6-741 through 744</b>	Reserved
<b>R7-6-745</b> Science Facilities	Informs the ASDB and the public of the general square footage requirements for space devoted to practical science instruction.
<b>R7-6-746</b> Equipment List for Science Facilities	Informs the ASDB and the public of requirements related to specific fixtures and equipment necessary for practical science instruction.
<b>R7-6-747</b> Art Facilities	Informs the ASDB and the public of the general and specific minimum adequacy square footage requirements for space devoted to art education

	programs.
<b>R7-6-748</b> Vocational Education Facilities	Informs the ASDB and the public of the general and specific square footage requirements to provide space for vocational education programs.
<b>R7-6-749</b> Physical Education and Comprehensive Health Program Facilities	Informs the ASDB and the public of the general and specific square footage requirements for space devoted to physical education and comprehensive health programs.
<b>R7-6-750</b> Equipment List for Physical Education	Informs the ASDB and the public of the specific fixture and equipment requirements for physical education.
<b>R7-6-751</b> Alternate Delivery Method	Informs the ASDB and the public of the local governing board approval requirements relative to the use of alternative delivery methods of instruction in art, science, or vocational education.
<b>R7-6-752 through 754</b>	Reserved
<b>R7-6-755</b> Parent Work Space	Informs the ASDB and the public of the general and specific square footage requirements for parent work space.
<b>R7-6-756</b> Two-way Internal Communication System	Informs the ASDB and the public of the minimum adequacy requirements for an internal communication system.
<b>R7-6-757</b> Fire Alarm	Informs the ASDB and the public of the requirement to provide a fire alarm system that is approved by the State Fire Marshal.
<b>R7-6-758</b> Administrative Space	Informs the ASDB and the public of the general and specific requirements for providing types of administrative space in school facilities.
<b>R7-6-759</b>	Reserved
<b>R7-6-760</b> Laws and Building Codes	Informs the ASDB and the public of the general requirement to conform to applicable laws and building codes, and specifies a minimum code compliance level.
<b>R7-6-761</b> Energy Saving Measures	Informs the ASDB and the public of the ability to provide energy conservation upgrades under certain conditions. However, this rule does not address the statutory prohibition (A.R.S. §15-2041(D)(3)(c)), which allows modification to the base cost per square foot only for geographic or site conditions.
<b>R7-6-762 through 764</b>	Reserved
<b>R7-6-765</b>	Informs the ASDB and the public of the qualities for a building system

Building Systems	to be considered in working order and capable of being maintained.
<b>R7-6-766 through 769</b>	Reserved
<b>R7-6-770</b> Building Structural Soundness	Informs the ASDB and the public of the qualities required of a building's structural systems for it to be considered structurally sound.
<b>R7-6-771</b> Exterior Envelope, Interior Surfaces and Interior Finishes	Informs the ASDB and the public of the qualities for the exterior envelope, interior surfaces, and finishes to be considered safe and capable of being maintained.
<b>R7-6-772 through 774</b>	Reserved
<b>R7-6-775</b> Minimum Gross Square Footage	Informs the ASDB and the public of the general requirement to provide minimum adequate gross square footage by school district.
<b>R7-6-776</b> Assessment of Minimum Gross Square Footage	Informs the ASDB and the public of the specific requirements to provide per pupil square footage according to various grade levels.
<b>R7-6-777 through 779</b>	Reserved
<b>R7-6-780</b> Student Boarding Space	Informs the ASDB and the public of the general and specific requirements to provide student boarding for resident ASDB students.
<b>R7-6-781</b> ASDB Program Requirement Facilities	Informs the ASDB and the public of the general and specific requirements to provide certain specialized program facilities for particular student populations.
<b>R7-6-782</b> Student Health Center	Informs the ASDB and the public of the general and specific requirements to house a student health center.
<b>R7-6-783</b> Parent Outreach Program	Informs the ASDB and the public of the general and specific requirements to house a parent outreach program at each campus.
<b>R7-6-784 through 789</b>	Reserved
<b>R7-6-790</b> Guidelines Exception	Informs the ASDB and the public of the ability of the School Facilities Board to grant an exception that will still meet guideline requirements.
<b>Article 8. through Article 16. Repealed</b>	
<b>Exhibit A. Repealed</b>	

3. **Are the rules effective in achieving their objectives?** Yes  No
- The rules are effective in achieving their objectives but the SFB believes the rules will be more effective when updated consistent with industry standards and current best practices.

4. **Are the rules consistent with other rules and statutes?** Yes  No

5. **Are the rules enforced as written?** Yes  No

The Board enforces the following rules as they are written:

All of Article 1. Definitions

All of Article 2. Minimum School Facility Guidelines

All of Article 3. Square Footage Calculations

Some subsections of Article 5. New School and Land Funding, and Article 6. Contingency Funds are not in complete alignment with accepted agency practice. Those incongruities have been identified by rulemaking processes that were attempted over the past 10 years but have not been changed. The need for the amendments contained in those prior rulemaking attempts still exists.

Article 7. Minimum School Facility Guidelines for the Arizona State Schools for the Deaf and Blind (ASDB) is enforced by the SFB as written, in partnership with the ASDB.

6. **Are the rules clear, concise, and understandable?** Yes  No

The current rulemaking process revealed that many of the rules are not clear, concise, and understandable.

They are also, in part, inconsistent with current rulemaking standards and agency practice. The rules in Article 7 are unnecessarily duplicative of those in Article 2. The Notice of Expedited Proposed Rulemaking that will be submitted this summer summarizes the amendments addressing these issues.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes  No

8. **Economic, small business, and consumer impact comparison:**

Before December 31, 2001, the Board's rulemaking authority was exempt from the provisions of Title 41, Chapter 6 (Laws 2001, Chapter 11) so an economic, small business, and consumer impact statement has never been prepared.

The rules in A.A.C. Title 7, Chapter 6 do not impose fees or regulations in the conduct of business for small companies or on the consumption of goods or services by individual citizens. The rules provide guidance to the SFB as it administers the new school facilities fund (See A.R.S. § 15-2041) and the building renewal grant fund (See A.R.S. § 15-2032) to ensure schools meet the minimum adequacy standards. While the optimum distribution of these funds is prescribed in statute, the available funding levels are subject to annual appropriations. These rules ensure consistent and impartial administration of the funds as they fluctuate based on the annual appropriation made to each of the funds.

These funds benefit the state economy because they provide the revenue streams necessary to build new schools and augment maintenance reserves of individual school districts enabling the school districts to maintain school buildings at a level that extends useful life and ensures the minimum standard of facility quality. Most of the work involved in designing, constructing, and maintaining school facilities is performed by local businesses. The economic impact on these local businesses is not the result of the

rules. Rather, the economic impact on these local businesses is affected by the funding levels of the annual appropriations provided to accomplish that work.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes \_\_\_ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?** Yes \_\_\_ No X

In a 5YRR approved by the Council on February 2, 2016, the SFB indicated it would amend many of the rules to correct identified deficiencies. The SFB will be completing its current rulemaking process by the end of the year and are planning a second rulemaking process in the next year to include new leadership at SFB as well as assess additional considerations post COVID-19.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules reviewed provide guidance to the SFB in administering the new school facilities fund and the building renewal grant fund. The rules ensure consistent and impartial administration of the funds as they fluctuate based on the annual appropriation and ensure taxpayer dollars are spent according the law. The rules also establish minimum requirements for school facilities, which ensure Arizona's children are educated in a safe environment. The Board believes the benefits imposed by the rules outweigh the probable costs of the rules. These rules are intended to impose the least burden and costs on the public.

12. **Are the rules more stringent than corresponding federal laws?** Yes \_\_\_ No X

The rules are not more stringent than federal law. There are numerous federal laws related to education. These include Title IX of the U.S. Education Amendments of 1972; Title VI of the Civil Rights Act of 1964; and the Individuals with Disabilities Act. A focus of these federal laws is ensuring the right to a free and high-quality education and equity in education. Only the Individuals with Disabilities Act directly impacts school facilities. The rules reviewed ensure equity by requiring school facilities to make accommodations for individuals with disabilities (See in particular R7-6-216 and R7-6-716).

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

None of the rules was made after July 29, 2010. None of the rules requires a permit.

14. **Proposed course of action**

Amendments to Articles (1), (2), and (7) are part of the expedited rulemaking process currently underway. The rulemaking docket was opened on July 7, 2019. The Notice of Proposed Expedited Rulemaking for the articles will be posted to the SFB website in the next month, and is attached and incorporated into this

report. It is the SFB's intention to submit the expedited rulemaking to the Council by the Council's September 22, 2020, deadline.

**NOTICE OF PROPOSED EXPEDITED RULEMAKING**

**TITLE 7. EDUCATION**

**CHAPTER 6. SCHOOL FACILITIES BOARD**

**PREAMBLE**

**1. Articles, Parts, and Sections Affected**

**Rulemaking Action**

R7-6-101	Amend
R7-6-201	Amend
R7-6-202	New Section
R7-6-205	Amend
R7-6-210	Amend
R7-6-211	Amend
R7-6-212	Amend
R7-6-213	Amend
R7-6-214	Amend
R7-6-215	Amend
R7-6-216	Repeal
R7-6-216	New Section
R7-6-220	Amend
R7-6-221	Amend
R7-6-225	Amend
R7-6-226	Amend
R7-6-227	Amend
R7-6-230	Amend
R7-6-235	Amend
R7-6-240	Repeal
R7-6-245	Amend
R7-6-246	Amend
R7-6-247	Amend
R7-6-248	Repeal
R7-6-249	Amend
R7-6-250	Amend
R7-6-251	Amend

R7-6-255	Amend
R7-6-256	Amend
R7-6-258	Amend
R7-6-260	Repeal
R7-6-261	Amend
R7-6-265	Amend
R7-6-270	Amend
R7-6-271	Amend
R7-6-285	Amend
R7-6-701	Amend
R7-6-705	Repeal
R7-6-710	Amend
R7-6-711	Amend
R7-6-712	Repeal
R7-6-713	Repeal
R7-6-714	Amend
R7-6-715	Repeal
R7-6-716	Repeal
R7-6-719	Amend
R7-6-720	Repeal
R7-6-721	Amend
R7-6-725	Repeal
R7-6-726	Repeal
R7-6-727	Repeal
R7-6-730	Repeal
R7-6-735	Repeal
R7-6-740	Repeal
R7-6-745	Repeal
R7-6-746	Repeal
R7-6-747	Repeal
R7-6-748	Repeal
R7-6-749	Repeal
R7-6-750	Amend
R7-6-751	Repeal

R7-6-755	Repeal
R7-6-756	Amend
R7-6-757	Repeal
R7-6-758	Amend
R7-6-760	Repeal
R7-6-761	Repeal
R7-6-765	Repeal
R7-6-770	Repeal
R7-6-771	Repeal
R7-6-780	Amend
R7-6-781	Amend
R7-6-782	Amend
R7-6-783	Repeal
R7-6-790	Repeal

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

Authorizing statute: A.R.S. §§ 15-2002(A)(11) and 15-2011(F)

Implementing statute: A.R.S. § 15-2002(A)(11) and 15-2011(F)

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

Notice of Rulemaking Docket Opening: 25 A.A.R. 1740, July 5, 2019

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

Name: Nick Loper, Executive Consultant

Address: 100 N 15th Avenue; Suite 103  
Phoenix, AZ 85007

Telephone: (602) 620-4868

E-mail: [nick.loper@azdoa.gov](mailto:nick.loper@azdoa.gov)

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

**5. An agency's explanation why the proposed expedited rule should be made, amended, repealed, or renumbered under A.R.S. § 41-1027(A) and why expedited proceedings are justified under A.R.S. § 41-1001(16)(c):**

The rules of the School Facilities Board were made in 2001. During the intervening years, the rules have become inconsistent with current industry standards and Board practice, technological changes,

and best practices regarding education. The rules are being updated to address these issues and others identified in a five-year-review report approved by the Council on February 2, 2016.

Under A.R.S. § 41-1027(A)(3) and (6), the Board is authorized to conduct an expedited rulemaking because the rulemaking does not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated by the rules. The rulemaking also corrects typographical errors, clarifies language without changing its effect, and repeals redundant rules unnecessary for the operation of state government.

An exemption from Executive Order 2017-02 was provided for this rulemaking by Dawn Wallace, Director of the Governor’s Office of Education, on August 24, 2017.

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

The Board does not intend to review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

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

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

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

**9. The agency's contact person who can answer questions about the economic, small business, and consumer impact of the proposed expedited rule:**

Name: Nick Loper, Executive Consultant

Address: 100 N 15th Avenue; Suite 103  
Phoenix, AZ 85007

Telephone: (602) 620-4868

E-mail: [nick.loper@azdoa.gov](mailto:nick.loper@azdoa.gov)

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

**10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, and how persons may provide written comment to the agency on the proposed expedited rule under A.R.S. § 41-1027(E):**

Written comments on the proposed expedited rulemaking should be directed to the person listed in item 4. Written comments must be received at or before the oral proceeding, which will be held as follows:

Date: Tuesday, July 21, 2020

Time: 10:00 A.M.

Location: In accordance with Department policy, the oral proceeding will be held telephonically. To participate in the oral proceeding, call 1-617-675-4444 and when requested, enter the following PIN: 585 562 989 9084#

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

None

**a. Whether the rule requires a permit, license, or agency authorization under A.R.S. § 41-1037(A) and whether a general permit is used and if not, the reasons why a general permit is not used:**

The Board does not issue permits.

**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:**

Civil rights laws prohibiting discrimination based on disability are federal laws applicable to school facilities. The rules are not more stringent than federal law.

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

No analysis was submitted.

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

None

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

**TITLE 7. EDUCATION**  
**CHAPTER 6. SCHOOL FACILITIES BOARD**  
**ARTICLE 1. DEFINITIONS**

Section

R7-6-101. Definitions

**ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES**

R7-6-201. Application

R7-6-202. ~~Reserved~~ Building Codes

R7-6-205. School Site

R7-6-210. ~~Academic Classroom Space~~ Square Footage

R7-6-211. ~~Classroom Light~~ Classroom Fixtures and Equipment

R7-6-212. ~~Reserved~~ Classroom Lighting

R7-6-213. Classroom Temperature

R7-6-214. Classroom ~~Acoustic~~ Acoustics

R7-6-215. Classroom Air Quality

R7-6-216. ~~Education Classroom Facilities for Disabled Students~~ Measuring Classroom Comfort

R7-6-220. ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center

R7-6-221. Equipment for ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center

R7-6-225. ~~Cafeterias~~ Cafeteria

R7-6-226. Food Service

R7-6-227. Equipment List for Food Service

R7-6-230. ~~Auditoriums, Multipurpose Rooms, or Other~~ Multiuse Space

R7-6-235. Technology

R7-6-240. ~~Transportation~~ Repealed

R7-6-245. Science Facilities

R7-6-246. Equipment List for Science Facilities

R7-6-247. Art Facilities; Career and Technical Education Facilities

R7-6-248. ~~Vocational Education Facilities~~ Repealed

R7-6-249. Physical Education and Comprehensive Health Program Facilities

R7-6-250. Equipment ~~List~~ for Outdoor Physical Education Activity

R7-6-251. Alternative Delivery Method

R7-6-255. Parent Work Space

R7-6-256. Two-way Internal Communication System

- R7-6-258. Administrative Space
- R7-6-260. ~~Laws and Building Codes~~ Repealed
- R7-6-261. Energy Saving Measures
- R7-6-265. Building Systems
- R7-6-270. Building Structural Soundness
- R7-6-271. Exterior Envelope, Interior Surfaces, and Interior Finishes
- R7-6-285. Guidelines Exception

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE  
SCHOOLS FOR THE DEAF AND BLIND**

Section

- R7-6-701. Application
- R7-6-705. ~~School Site~~ Repealed
- R7-6-710. ~~Academic Classroom Space~~ Square Footage Requirements for the ASDB
- R7-6-711. Classroom Fixtures and Equipment
- R7-6-712. ~~Classroom Lighting~~ Repealed
- R7-6-713. ~~Classroom Temperature~~ Repealed
- R7-6-714. Classroom Acoustics
- R7-6-715. ~~Classroom Air Quality~~ Repealed
- R7-6-716. ~~Education Classroom Facilities for Disabled Students~~ Repealed
- R7-6-720. ~~Libraries and Media Centers/Research Area~~ Repealed
- R7-6-721. Equipment for ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center
- R7-6-725. ~~Cafeterias~~ Repealed
- R7-6-726. ~~Food Service~~ Repealed
- R7-6-727. ~~Equipment List for Food Service~~ Repealed
- R7-6-730. ~~Auditoriums, Multipurpose Rooms, or Other Multiuse Space~~ Repealed
- R7-6-735. ~~Technology~~ Repealed
- R7-6-740. ~~Transportation~~ Repealed
- R7-6-745. ~~Science Facilities~~ Repealed
- R7-6-746. ~~Equipment List for Science Facilities~~ Repealed
- R7-6-747. ~~Art Facilities~~ Repealed
- R7-6-748. ~~Vocational Education Facilities~~ Repealed
- R7-6-749. ~~Physical Education and Comprehensive Health Program Facilities~~ Repealed

- R7-6-750. Equipment List for Outdoor Physical Education
- R7-6-751. ~~Alternative Delivery Method~~ Repealed
- R7-6-755. ~~Parent Work Space~~ Repealed
- R7-6-756. Two-Way Internal Communication System
- R7-6-757. ~~Fire Alarm~~ Repealed
- R7-6-758. Administrative Space
- R7-6-760. ~~Laws and Building Codes~~ Repealed
- R7-6-761. ~~Energy Saving Measures~~ Repealed
- R7-6-765. ~~Building Systems~~ Repealed
- R7-6-770. ~~Building Structural Soundness~~ Repealed
- R7-6-771. ~~Exterior Envelope, Interior Surfaces and Interior Finishes~~ Repealed
- R7-6-775. ~~Minimum Gross Square Footage~~ Repealed
- R7-6-776. ~~Assessment of Minimum Gross Square Footage~~ Repealed
- R7-6-780. Student Boarding Space
- R7-6-781. Facility Requirements for ASDB Program Requirement Facilities Programs
- R7-6-782. Student Health Center
- R7-6-783. ~~Parent Outreach Program~~ Repealed
- R7-6-790. ~~Guidelines Exception~~ Repealed

## ARTICLE 1. DEFINITIONS

### R7-6-101. Definitions

~~In~~ The definitions at A.R.S. § 15-2032 apply to this Chapter. ~~Additionally,~~ unless otherwise specified, ~~the following terms mean in this Chapter:~~

1. ~~“Ambient CO<sub>2</sub> Level~~ CO<sub>2</sub> level” means the carbon dioxide level of the outside air.
2. ~~“All-weather~~ All-weather surface” means ~~a~~ an area for vehicular use ~~and/or~~ or parking area that ~~shall be~~ is surfaced with ~~one of the following:~~ asphalt, concrete, chip seal, graded and compacted gravel, or other stabilized system.
3. ~~“Area” means exterior covered or uncovered portion of a school site.~~
- 4.~~3.~~ “Board” means the School Facilities Board.
- 5.~~4.~~ “Decibel” means a unit ~~in which various acoustical hearing level quantities are expressed for~~ expressing the relative intensity of sounds.
- 6.~~5.~~ “Eligible students” ~~means eligible students as defined in~~ has the same meaning as prescribed at A.R.S. § 15-901(A)(9).
- 7.~~6.~~ “Equipment” means ~~a specified~~ an item not affixed to the real property of a school facility.
8. ~~“Executive Director” means Executive Director of the School Facilities Board as set forth in A.R.S. § 15-2002(C).~~
- 9.~~7.~~ “Exterior envelope” means the exterior walls, floor, and roof of a building.
- 10.~~8.~~ “Fixture” means ~~a specified~~ an item ~~that is~~ affixed to the real property of a school facility.
- 11.~~9.~~ “Footcandle Foot-candle” means ~~the direct light thrown,~~ amount of illumination the inside surface of ~~on a square foot of surface,~~ a one-foot-radius sphere would receive from ~~by~~ a candle 7/8 inch in diameter burning at the exact center of the sphere at 7.776 grams per hour.
- 12.~~10.~~ “FTE” means ~~fulltime~~ full-time equivalent.
- 13.~~11.~~ “General Classroom classroom” means a ~~classroom~~ space that ~~is or~~ can be appropriately configured for instruction in at least the areas of language arts, mathematics, and social studies.
- 14.~~12.~~ “HVAC” means a heating, ventilation, and air conditioning system. ~~This does not necessarily mean a refrigerated~~ The air conditioning system may or may not be refrigerated.
13. “IEP” means individualized educational plan, a legal document required by law for each public school child who needs special education.
- 15.~~14.~~ “Normal Conditions conditions” means occupancy during regular school hours while the building system is operating.
- 16.~~15.~~ “PPM” means parts per million.
17. ~~“Pupil” means student.~~

- ~~18. “Pupil transportation vehicle” means a bus used to transport eligible students between their residence and a school facility for the academic day or a vehicle used to transport eligible disabled students between their residence and a school facility for the academic day.~~
- ~~19.~~ 16. “Random sample” means arbitrary selection through a process of assigning numbers to in which each classroom in each building to be assessed has an equal chance of being selected.
- ~~20.~~ 17. “School facility” means a building or group of buildings and outdoor area that are administered together to comprise a school campus.
- ~~21.~~ 18. “School site” means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site.
- ~~22. “Space” means square footage located within the interior of a building.~~
- ~~23.~~ 19. “Specialty classroom” means a classroom space square footage that is or can be appropriately configured for instruction in a specific subject such as specifically designed for instruction in science, physical education, career and technical education, or art.
- ~~24. “Student body” means the number of students at a school facility.~~
- ~~25.~~ 20. “Student” means the number of students an individual:
- a. Enrolled at a school facility; and
  - b. ~~in~~ In average daily membership. Average daily membership is defined as the attending average enrollment of fractional students and full time students, minus withdrawals, of each school day through the first 100 days in session, not adjusted for average daily attendance , which is defined at A.R.S. § 15-901.
- ~~21. “Student body” means the number of students at a school facility.~~
- ~~26. “Transportation capacity” means the number of passenger seats, according to manufacturer specifications, available on all of the pupil transportation vehicles owned by the school district, multiplied by two.~~

## ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES

### R7-6-201. Application

A. The provisions of this Article Chapter apply:

1. After the effective date of the Chapter, and
2. To a newly constructed school facility, primary building renewal project, and necessary equipment.

B. The provisions of this Chapter are applicable to a school facility and equipment that are necessary to meet the minimum school facility guidelines established in this Article or to meet the gross square-footage standards in addition to standards prescribed by law.

C. A school facility constructed or renewed and equipment obtained before the effective date of this Chapter is not required to comply with the provisions in this Chapter.

**R7-6-202. ~~Reserved~~ Building Codes**

A. When constructing a new school facility or performing a primary building renewal project, a school district shall comply with all applicable federal, state, and local building codes.

B. The Board shall maintain on its web site a list of building codes applicable to construction of a new school facility or renewal of an existing school facility. Before constructing a new school facility or renewing an existing school facility, a school district shall review the list of building codes to ensure compliance with all applicable codes.

**R7-6-205. School Site**

A. A school site shall have safe access, parking, drainage, and security, ~~and area~~ to accommodate a school facility that complies with:

1. the The minimum gross square footage requirements established in A.R.S. § 15-2011, for the number of students at the school facility; ~~and that comply with these guidelines~~
2. This Chapter.

B. ~~“Safe access” means~~ A school site provides safe access by having:

1. a A student ~~drop-off~~ drop-off area; and
2. ~~or~~ A pedestrian pathway that allows students to enter the school facility through a designated point of entry without crossing vehicular traffic or by ~~using~~ crossing vehicular traffic at a designated crosswalk. ~~Any student drop-off area that is used by a bus must be configured to accommodate bus width and turning requirements.~~

C. ~~“Parking means a maintainable all-weather surfaced~~ A school site provides adequate parking by having an all-weather surface area that is large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. ~~If this definition is not met,~~ A school site that is unable to provide adequate parking may have the sufficiency of the parking at the school site is ~~subject to review~~ determined by the Board using the following criteria:

1. Availability of street parking around the school;
2. Availability of any nearby parking lots;
3. Availability of public transit;
4. Number of staff ~~that~~ who drive to work on a daily basis; and
5. The average number of visitors on a daily basis.

- D. ~~“Drainage” means that a~~ A school site provides adequate drainage is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare if the school site is prepared in a manner consistent with the drainage and floodplain management standards of the jurisdiction in which the school site is located.
- E. ~~“Security” means~~ A school site provides adequate security if there is a fenced or walled, play/physical outdoor, play or physical education area for preschool students with disabilities in programs for preschool children with disabilities and kindergarten and students in grades one kindergarten through grade six. This definition is met if the entire school is fenced or walled. If this definition is not met, A school site that is unable to provide adequate security may have the sufficiency of security at the school site is subject to review determined by the Board using the following criteria:
1. Amount of vehicular traffic near the school site;
  2. Existence of hazardous or natural barriers on or near the school site;
  3. The amount of animal nuisance near the school site; and
  4. Visibility of the ~~play/physical~~ outdoor, play or physical education area.

**R7-6-210. Academic Classroom Space Square Footage**

- A. A school district shall have school facilities with the following minimum cumulative classroom square footage: of 32 square feet for each student in programs for preschool children with disabilities, kindergarten programs and grades one through three in the district.
1. For preschool students with disabilities through grade three: 32 square feet per student;
  2. For grades four through six: 28 square feet per student;
  3. For grades seven and eight: 26 square feet per student; and
  4. For grades nine through 12: 25 square feet per student.
- B. ~~A school district shall have school facilities with cumulative classroom square footage of 28 square feet for each student in grades four through six in the district.~~ Classroom square footage of a school facility is measured from interior wall to interior wall of a classroom and is the space required for teaching. Both general and specialty classrooms are included in the classroom square footage of a school facility.
- C. ~~A school district shall have school facilities with cumulative~~ Cumulative classroom square footage of 26 square feet for each student in grades seven and eight in the district. is measured as follows:
1. 100 percent of the classroom square footage usable for general classroom purposes and occupied throughout a day by the same students in programs for preschool students with disabilities, kindergarten, and grades one through six;

2. 90 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades seven and eight; and
  3. 85 percent of the classroom square footage usable for general and specialty classroom purposes in programs for students in grades nine through 12.
- ~~D.~~ A school district shall have school facilities with cumulative classroom square footage of 25 square feet for each student in grades 9 through 12 in the district. Classroom square footage includes space allocated for any of the following purposes:
1. Garment storage,
  2. Supply storage,
  3. Work counter; and
  4. Teacher or student collaboration.
- ~~E.~~ For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes. An exterior space may be included in the classroom square footage of a school facility if the exterior space is covered and meets all other standards in this Chapter.
- ~~F.~~ For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- ~~G.~~ For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- ~~H.~~ Classroom space is measured from interior wall to interior wall.
- ~~I.~~ The amount of classroom space per student specified in this Article accounts for required teaching space.
- ~~J.~~ The square footage of a general classroom is not counted as specialty classroom square footage.
- ~~K.~~ The square footage of a specialty classroom is not counted as general classroom square footage.

#### **R7-6-211. Classroom Fixtures and Equipment**

- ~~A.~~ Each general and specialty classroom shall:
1. ~~contain~~ Contain a work surface and seat for each student, teacher, and other individual regularly assigned to in the classroom. The work surface and seat shall be:
    - a. ~~appropriate~~ Appropriate for the normal activity of the class conducted in the room. ~~A work surface and seat are adequate if the items are:, and~~

1. ~~Safe; and~~
  2. ~~b. Maintainable Capable of being moved into different configurations;~~
- ~~B. 2. Each general and specialty classroom shall have~~ Have one or more, non-electronic, mounted or retractable, surfaces, at least three feet by five feet, which fulfill all of the following purposes:
- ~~a. an~~ Is erasable, surface and a surface
  - ~~b. Is suitable for projection, and purposes, appropriate for group classroom instruction and a~~
  - ~~c. Is suitable for display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet.~~
- ~~C.3. Each general and specialty classroom shall have~~ Have storage for classroom materials or access to conveniently located accessible storage; and
- ~~D.4. Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and~~ Have secure storage for student records, that is located in the classroom or is convenient to access from the classroom or conveniently accessible secure storage. Student records may be stored electronically.

#### **R7-6-212. Classroom Lighting**

- ~~A. Each general, science, and art classroom shall have a light system capable of maintaining at least:~~
- ~~1. 50 footcandles~~ Fifty foot-candles of light if the light is provided by incandescent, halogen, or fluorescent bulbs; or
  - ~~2. Thirty foot-candles of light if the light is provided by LED (light emitting diode) bulbs;~~
- ~~B. The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility. D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

#### **R7-6-213. Classroom Temperature**

- ~~A. Each general, science, and art classroom~~ A school facility shall have a an HVAC system capable of maintaining a temperature between 68° and 82 F under normal conditions with an occupied classroom.

- B. Except in areas where the elevation is above 5,000 feet, defective or non-operable air conditioners and evaporative coolers shall be replaced with air conditioning. Non-air conditioned schools with elevations less than 5,000 feet.
- ~~C. The temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~D. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.~~
- ~~E. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-214. Classroom Acoustics**

- ~~A. Each general, science, and art classroom shall be maintainable at a The sustained background sound level of each general, science, and art classroom shall be less than 55 decibels.~~
- ~~B. The sound level shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom sound level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-215. Classroom Air Quality**

- ~~A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO2 The CO<sup>2</sup>-level of not more than in each general and specialty classroom shall not exceed 800 PPM above the ambient CO2 level.~~
- ~~B. The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-216. ~~Education Classroom Facilities for Disabled Students~~ Measuring Classroom Comfort**

~~A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility. To determine whether a school facility complies with the standards in R7-6-212 through R7-6-215:~~

- ~~1. Classroom lighting, temperature, acoustics, and air quality shall be measured at a work surface in the approximate center of a classroom under normal conditions;~~
- ~~2. Measuring shall be performed for a random sample of 10 percent of the general, science, and art classrooms in each building of the school facility; and~~
- ~~3. All portable or modular buildings manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-220. ~~Libraries and Media Centers/Research Area~~ Learning and Technology Center**

- ~~A. A school facility shall have a learning and technology center with space for students to access electronic and hard-copy research materials, literature, nontext and reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. This The learning and technology center shall include space for reading, listening, and viewing materials.~~
- ~~B. For an elementary school facility that serves at least 150 students, this space the learning and technology center shall ~~be~~ have space equal to the greater of 1000 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.~~
- ~~C. For a middle or junior high or high school facility that serves at least 150 students, this space the learning and technology center shall ~~be~~ have space equal to the greater of 1200 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.~~
- ~~D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-221 as modified from time to time.~~
- ~~E. A school facility shall have library materials in accordance with R7-6-221 as modified from time to time.~~

**R7-6-221. ~~Equipment for Libraries and Media Centers/Research Area~~ Learning and Technology Center**

- ~~A. The standard equipment list for libraries and media centers/research areas is as follows learning and technology center of a school facility shall contain the following minimum equipment:~~

1. One linear foot of ~~library book shelves~~ shelf space per student;
  2. For a school facility of 150 or more students, one work surface and seat for every 20 students, minimum of 15, maximum of 75;
  3. ~~For a school of 150 or more students, one seat for every 20 students, minimum of 15, maximum of 75;~~
  4. ~~3.~~ One TV/VCR;
  5. ~~4.~~ ~~One overhead projector~~ Projection equipment and projection surface;
  6. ~~5.~~ Ten books per ~~students~~ student; and
  7. ~~6.~~ ~~One almanac (may be~~ An electronic or hard copy); of each of the following:
    - a. Almanac,
    - b. Encyclopedia,
    - c. Atlas, and
    - d. Unabridged dictionary.
  8. ~~One encyclopedia set per 200 students (may be electronic or hard copy);~~
  9. ~~One atlas (may be electronic or hard copy); and~~
  10. ~~One unabridged dictionary (may be electronic or hard copy).~~
- B. ~~Each~~ If a hard-copy almanac, encyclopedia, and or atlas is used, each shall have a publication date of 2000 or later.

**R7-6-225. Cafeterias Cafeteria**

A school facility shall have a covered ~~area or space, or combination, to permit in which~~ students are able to eat within the school site, outside of ~~general~~ classrooms. ~~This~~ The space used as a cafeteria may have more than one function and may fulfill more than one guideline requirement (~~auditorium and/or indoor physical education~~) in this Chapter.

**R7-6-226. Food Service**

- A. A school facility shall have space, ~~and~~ fixtures, and equipment, ~~in accordance with the standard equipment list in R7-6-227 as modified from time to time, for the preparation, receipt, storage, and service of~~ sufficient for receiving, storing, preparing, and serving food to students. The food service fixtures and equipment shall be in or accessible to the cafeteria space. that is accessible to the serving area. ~~The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R7-6-265(A)(1) and (2).~~

- ~~B. Food~~ A school facility shall ensure food service facilities fixtures and equipment shall comply with county health codes.

**R7-6-227. Equipment List for Food Service.**

- A. A school facility that receives, stores, prepares, and serves food to students shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:
1. One three-compartment sink<sub>2</sub>
  2. One ~~double stack~~ double-stack convection oven for a cooking kitchen or a warming oven<sub>2</sub>
  3. One dishwasher if reusable dishes and silverware are used<sub>2</sub>
  4. One ~~hot food~~ hot-food holding appliance<sub>2</sub>
  5. One range with hood<sub>2</sub>
  6. One refrigerator<sub>2</sub>
  7. One freezer<sub>2</sub> and
  8. One milk refrigerator.
- B. ~~The items in subsection (A) of this Section may be substituted for a reasonable~~ An alternative may be substituted for any item in subsection (A) if the alternative enables the school facility to receive, store, prepare, and serve food to students.
- C. A school facility that receives, stores, and serves food prepared off the school site may adjust the items in subsection (A) accordingly.

**R7-6-230. Auditoriums, Multipurpose Rooms, or Other Multiuse Space**

A school facility shall have a space capable of being used for student assembly. The space shall be:

1. ~~sufficient~~ Large enough to accommodate one-third of the student body, ~~which shall be the~~
2. The same size or larger than an average classroom at the school facility, and. ~~The space must be~~
3. ~~equal to at~~ At least seven square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or indoor physical education).

**R7-6-235. Technology**

- A. ~~Each classroom at a~~ A school facility shall ~~have Internet access, at least through a network modem.~~ Each school must have available either on a school basis or on a district wide basis a firewall and filtering software. ~~Each school facility shall have~~ provide at least one network connected multimedia

~~computer device~~, available for student use, for every eight students, ~~on a school-wide network~~. Computer equipment is subject to assessment under R7-6-265(A)(1) and (2). A multimedia device is a computer, tablet, or other smart device with internet access capable of presenting multimedia content.

- ~~B. A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.~~
- ~~C. Until June 30, 2005, each district shall have an application service provider, coupled with an adequate variety of instructional software.~~
- ~~D. In order to meet the requirements of this Section, should a school district have an application service provider in place, the school district may also meet the requirements of subsection (A) of this Section by purchasing thin-client terminals or network appliances with full access to the Internet, equipped with a 13" screen or larger monitors.~~

#### **R7-6-240. Transportation Repealed**

- ~~A. Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~
- ~~B. Diesel-powered pupil transportation vehicles with more than 400,000 miles and gasoline-powered pupil transportation vehicles with more than 200,000 miles shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~
- ~~C. Diesel-powered pupil transportation vehicles with more than 266,800 miles and gasoline-powered pupil transportation vehicles with more than 133,400 miles shall be replaced if at least one-half of the miles accumulated on the vehicle were driven on unpaved roads and if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~

#### **R7-6-245. Science Facilities**

- A. A school facility with students in grades ~~5~~ five through 12 shall have classroom ~~space to deliver square footage for delivery of practical science instruction, or classroom space for an alternate science delivery method in science.~~
  1. For grades five through eight, ~~no space is required beyond the academic classroom requirement~~ classroom square footage is required other than as specified in R7-6-210.

2. For grades ~~9~~ nine through 12, four square feet per student is required for ~~of~~ practical and ~~instructional~~ instruction in science space is required. The space shall not be smaller than the average classroom at the facility. ~~This space is included in the academic classroom requirement and may be used for other instruction~~ when not needed for practical instruction in science.

B. A ~~Except as specified in R7-6-251, a school facility with students in grades 5~~ five through 12 ~~that delivers practical science instruction shall have the science fixtures and equipment, in accordance with specified in R7-6-246 as modified from time to time. If an alternate science delivery method is used by a district, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-246 for delivery of practical instruction in science.~~

#### **R7-6-246. Equipment List for Science Facilities**

A. Science facilities for students in grades ~~9~~ nine through 12 shall have the following fixtures and equipment:

1. One demonstration table with non-corrosive surface per 250 students;
2. Six laboratory stations with a non-corrosive surface per 250 students;
3. One fume hood;
4. One chemical storage unit per 1,000 students;
5. One ~~eye wash/shower~~ eyewash or safety shower station per 250 students;
6. One dissecting microscope per 25 students, minimum of ~~the lesser of 12~~ dissecting microscopes or the number equal to one-half of the number of eligible students in grades nine through 12 divided by 25, whichever is fewer; and
7. One refrigerator.

B. Science facilities for students in grades five through 12 shall have the following fixtures and equipment:

1. One sink per 250 students;
2. One compound microscope per 25 students, minimum of ~~the lesser of 12~~ compound microscopes or the number equal to one-half of the number of eligible students in grades five through 12 divided by 25, whichever if fewer; and
3. One balance per 250 students.

#### **R7-6-247. Arts Facilities; Career and Technical Education Facilities**

- A. ~~A~~ Except as specified in R7-6-251, a school facility with students in grades 7 seven through 12 shall have space to deliver art education programs, including visual, music, and performing arts, ~~programs or have access to an alternate delivery method~~ and career and technical education programs.
- B. ~~For~~ A school facility with students in grades 7 seven through 12, shall have four square feet per student of art and/or vocational education space is required for art education and career and technical education. The space shall not be smaller than the average classroom at the facility. ~~This space is included in the academic classroom requirement~~ and may be used for other instruction when not needed for instruction in the arts or career and technical education.
- C. A school facility with students in kindergarten through sixth grade may deliver art education in the classroom square footage specified in R7-6-210. Education in performing arts may be delivered to students in kindergarten through sixth grade in spaces such as a multiuse space, gymnasium, or cafeteria if the spaces have appropriate acoustical treatment.

**R7-6-248. ~~Vocational Education Facilities Repealed~~**

- A. ~~A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.~~
- B. ~~For grades 7 through 12, four square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.~~

**R7-6-249. Physical Education and Comprehensive Health Program Facilities**

- A. A school facility shall have ~~area and space and fixtures, in accordance with R7-6-250 as modified from time to time,~~ classroom square footage for indoor physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B. ~~For schools designed for 20-50 students, the~~ The indoor space classroom square footage available for physical education must be one single space of at least 1,600 square feet. activity shall be:
  - 1. For a school facility designed to serve no more than 50 students: at least 1,600 square feet in a single space;
  - 2. ~~For schools designed for 50~~ a school facility designed to serve 51 to 125 students; the indoor space available for physical education must be one single space of at least 2,600 square feet in a single space;

~~3. For schools a school facility designed for more than 125 to serve 126 to 600 students; the total indoor space available for physical education must be at least 5,100 square feet, and one single space that is of which at least 2,600 square feet must be available. is in a single space; and~~

~~4. For a school facility designed to serve more than 600 students: at least 7,500 square feet, which may include space that also serves as a cafeteria.~~

~~C. This space The classroom square footage designated in subsection (B) may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or auditorium). The including the comprehensive health space is the indoor space available for physical education program.~~

#### **R7-6-250. Equipment List for Outdoor Physical Education Activity**

~~A. A school facility shall have the following equipment and fixtures for physical education:~~

~~1. Exterior to the building, one hardscape equivalent in size to an outdoor basketball court size-surface area and two goals per 300 students, four court to a maximum of three hardscapes.~~

~~2.B. Exterior to the building, one baseball/softball backstop A school facility with students in grades seven through 12 shall have a sports field appropriate for softball, hardball, football, track, soccer, or other sports.~~

~~B. Concrete shall be used when installing basketball courts.~~

#### **R7-6-251. Alternate Alternative Delivery Method**

~~If A school district may use an alternate delivery alternative method is used by the district to deliver instruction in art, science, or vocational career and technical education; the Before an alternate alternative method is used, the school district must be approved by shall:~~

~~1. Have the school district governing board and be determine the alternative method is capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area; and~~

~~2. Approve use of the alternative method.~~

#### **R7-6-255. Parent Work Space**

~~A. If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by large enough to accommodate the number of parents expected to assist with school activities at one time.~~

- B. ~~One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The parent work space may be divided into more than one room. This space in multiple locations throughout the school facility and~~ may have more than one function.

#### **R7-6-256. Two-way Internal Communication System**

A school facility shall have a ~~network and~~ two-way internal communication system between a central location and ~~each classroom, library, physical education space, and the cafeteria~~ each general and specialty classroom, the learning and technology center, and the cafeteria.

#### **R7-6-258. Administrative Space**

- A. A school facility shall have space for ~~the use of~~ by the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes, ~~and additional 1.5 square feet per student is required, with a minimum of a space between 150 square feet and a maximum of 2,500~~ and 1.5 square feet per student, as reasonable for the size of the anticipated student body, is required. The maximum may be exceeded.
- B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be ~~a designated space that is~~ accessible to a restroom, and large enough to accommodate one cot per 200 students, with a maximum of four cots. ~~The maximum may be exceeded.~~
- C. A school facility shall have work space available to the faculty. ~~This space that is~~ in addition to any work area available to a teacher, space in or near a classroom. ~~One square foot per student with a maximum of~~ A space between 150 square feet and a maximum of 800 and one square foot is required foot per student, as reasonable for the size of the anticipated student body, is required. ~~The maximum may be exceeded. The space may be divided into more than one room. This~~ The faculty work space may be in multiple locations throughout the school facility and may have more than one function.

#### **R7-6-260. Laws and Building Codes Repealed**

- A. ~~To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Existing school buildings are not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.~~

- ~~B. At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.~~

#### **R7-6-261. Energy Saving Measures**

~~New school facility construction and, as required, building renovations in existing school, Both construction of a new school facility and renewal of an existing school facility shall include, where reasonable, energy conservation ~~upgrades~~ measures that will provide dollar savings in excess of the cost of the ~~upgrade~~ conservation measure within eight years of the ~~installation~~ construction or renewal.~~

#### **R7-6-265. Building Systems**

- A. ~~Building~~ As required under A.R.S. § 15-2011(B)(3), building systems in a school facility must shall be in working order and capable of being properly maintained. A building system ~~shall be~~ is considered to be in “working order and capable of being maintained,” if ~~all of the following:~~
- ~~1. The system is capable of being operated as intended and maintained;~~
  - ~~2. The system is capable of being maintained according to manufacturer’s instructions;~~
  - ~~2.3. Newly manufactured or refurbished replacement parts are available;~~
  - ~~3.4. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years;~~
  - ~~4.5. The system is capable of supporting the gross square footage standard and minimum of the school facility guidelines established in this Article; and~~
  - ~~5.6. Components of the system present no imminent danger of personal injury.~~
- B. ~~Building systems include, as required by law, under A.R.S. § 15-2011(B)(3) to be in working order and capable of being maintained include~~ roof, plumbing, telephone, electrical, and heating and cooling HVAC systems. Additionally, under this Chapter, the following building systems shall be in working order and capable of being properly maintained: as well as fire alarm, two-way two-way internal communication, computer network cabling, and existing security systems.

#### **R7-6-270. Building Structural Soundness**

A As required under A.R.S. § 15-2011(B)(4), all buildings of a school facility must shall be structurally sound. A building of a school facility shall be is considered structurally sound if the building:

- ~~1. presents~~ Presents no imminent danger of personal harm, or major

2. Has no visible signs of major decay or distress, and
3. ~~the~~ Appears to have at least three years of remaining life expectancy of the building structure  
~~appears to be at least a minimum of three years.~~

**R7-6-271. Exterior Envelope, Interior Surfaces, and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes ~~at of a school facilities must~~ facility shall be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are ~~weather tight under normal conditions with routine upkeep~~ constructed of materials requiring minimal maintenance, including painting;
  - b. ~~Doors~~ Walls, roof, doors, and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years ~~after the initial statewide assessment.~~
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years ~~after the initial statewide assessment.~~

**R7-6-285. Guidelines Exception**

The Board may grant an exception from any of the guidelines ~~requirements, in this Chapter. upon~~  
~~agreement between the Board and the school district.~~ To obtain an exception, the governing board of the  
school district shall submit a written request to the Board. The Board shall grant an exception if it determines ~~that~~ the intent of the guideline is capable of being met by the school district in an ~~alternate~~  
alternative manner. If the Board grants the exception, the Board shall deem the school district ~~shall be~~  
~~deemed to meet~~ meets the guideline and is not eligible for state funding to meet the guideline.

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE  
SCHOOLS FOR THE DEAF AND BLIND**

**R7-6-701. Application**

- A. The provisions of Article 2 apply to the Arizona State Schools for the Deaf and Blind (ASDB), created under A.R.S. Title 15, Chapter 11, except as specified in this Article.
- B. When a provision of Article 2 refers to a school district, the reference shall be interpreted to mean the ASDB governing board.
- C. If there is a conflict between a provision of this Chapter and a student’s IEP, the IEP controls.
- D. The provisions of this Article are applicable only to the Arizona State Schools for the Deaf and Blind (“ASDB”) as created by A.R.S. Title 15, Chapter 11. Board funding for ASDB deficiency correction projects pursuant to this Article is subject to legislative authorization for such funding.

**R7-6-705. School Site Repealed**

- ~~A. A school site shall have safe access, parking, drainage, security, and area to accommodate a school facility that complies with the minimum gross square footage requirements established in A.R.S. § 52011, for the number of students at the school facility and that comply with these guidelines.~~
- ~~B. “Safe access” means a student drop off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or by using a designated crosswalk. Any student drop off area that is used by a bus must be configured to accommodate bus width and turning requirements.~~
- ~~C. “Parking means a maintainable all weather surfaced area that is large enough to accommodate one parking space per staff FTE and 10 visitor parking spaces per 100 students. If this definition is not met, the sufficiency of the parking at the site is subject to review by the Board using the following criteria:
  - 1. Availability of street parking around the school;
  - 2. Availability of any nearby parking lots;
  - 3. Availability of public transit;
  - 4. Number of staff that drive to work on a daily basis; and
  - 5. The average number of visitors on a daily basis.~~
- ~~D. “Drainage” means that a school site is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare.~~

- ~~E.~~ “Security” means perimeter fencing surrounding the campus with lockable access gates with at least one automatic gate including card access as well as sight/audio, two-way communication with a central security office. The campus shall also have an accessible security office of at least 300 square feet per campus for visitor registration and multiple campus surveillance cameras strategically located around campus feeding video to the security office via monitors. The campus shall also have a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades 1 through 6. The requirement for a fenced or walled play/physical education area is met if the entire school is fenced or walled; otherwise, the sufficiency of this requirement is subject to review by the Board using the following criteria:
- ~~1. Amount of vehicular traffic near the school site;~~
  - ~~2. Existence of hazardous or natural barriers on or near the school site;~~
  - ~~3. The amount of animal nuisance near the school site; and~~
  - ~~4. Visibility of the play/physical education area.~~

**R7-6-710. Academic Classroom Space Square Footage Requirements for the ASDB**

~~A.~~ To accommodate the needs of ASDB students, the classroom square footage requirements of the ASDB differ from those of other school facilities as follows.

~~A.B.~~ The ASDB shall have school facilities with Minimum cumulative classroom square footage; of 150 square feet for each of its students in programs for preschool children with disabilities and kindergarten programs.

1. For preschool students with disabilities through kindergarten: 150 square feet per student; and
2. For grades one through 12: 100 square feet per student.

~~B.C.~~ The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades kindergarten through six. Learning and technology center:

1. For an elementary school facility that serves at least 150 students, the greater of 1000 square feet or the square footage equal to 325 square feet per student for 10 percent of the student body; and
2. For a middle or junior high or high school facility that serves at least 150 students, the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.

~~C.D.~~ The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades seven and eight. Multiuse space capable of being used for student assembly:

1. Large enough to accommodate one-half of the student body plus parents and staff,

2. The same size or larger than an average classroom at the ASDB, and
3. At least 50 square feet multiplied by one-third of the student body in addition to the square footage of open aisle and exiting path space.

~~**D.E.** The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades 9 through 12. Science facilities:~~

1. For grades five through eight, no classroom square footage is required other than as specified in R7-6-710; and
2. For grades nine through 12, 10 square feet per student is required for practical instruction in science.

~~**E.F.** For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes. Art facilities: For students in grades seven through 12, 10 square feet per student is required for art education.~~

~~**F.G.** For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes. Career and technical education facilities: For students in grades seven through 12, 40 square feet per student is required for career and technical education programs.~~

~~**G.H.** For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes. Physical education and comprehensive health program facilities: 125 square feet per student of indoor space is required for physical education and comprehensive health programs.~~

~~**H.I.** Classroom space is measured from interior wall to interior wall. The spaces designated under subsections (C) through (H) shall not be smaller than the average classroom at the ASDB.~~

~~**I.J.** The amount of classroom space per student specified in this Article accounts for required teaching space. The spaces designated under subsections (E) through (H) shall not be:~~

1. Included in the classroom square footage requirement; or
2. Used for instruction other than the specialty instruction specified.

~~**J.** The square footage of a general classroom is not counted as specialty classroom square footage.~~

~~**K.** The square footage of a specialty classroom is not counted as general classroom square footage.~~

#### **R7-6-711. Classroom Fixtures and Equipment**

**A.** Each general and specialty classroom of the ASDB shall contain:

1. ~~two~~ Two work surfaces and seating per student and seating for each student, in the classroom that accommodates The work surfaces and seat shall accommodate the special needs of a student who is deaf, blind, and multi-handicapped students or has multiple disabilities. ~~The work surface and seat shall be appropriate for the normal activity of the class conducted in the room. A work surface and seat are adequate if the items are;~~ and
    1. ~~Safe;~~ and
    2. ~~Maintainable~~ One work surface and seat for the teacher and any other individual regularly assigned to the classroom.
- ~~B. Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction and a display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet. The ASDB shall provide the equipment and supplies necessary to meet the IEP of all students.~~
- ~~C. Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.~~
- ~~D. Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and secure storage for student records, that is located in the classroom or is convenient to access from the classroom.~~
- ~~E. Each classroom shall have the following equipment to facilitate instruction to deaf/hard of hearing students:~~
1. ~~TTY~~
  2. ~~Accessible computer with Internet access and printer~~
  3. ~~Television with built-in captioned and videocassette recorder.~~
  4. ~~Loop systems for auditory access.~~
  5. ~~Sound field amplification system.~~
  6. ~~Overhead projector.~~
- ~~F. Each classroom shall have the following equipment to facilitate instruction to blind/visually impaired students:~~
1. ~~One CCTV.~~
  2. ~~One listening station.~~
  3. ~~Two Braille n' Speaks.~~
  4. ~~Two Braille writers.~~
  5. ~~Slantboards.~~
  6. ~~Fully accessible computer station with Braille printer.~~

7. ~~Tables to accommodate Braille writers and Braille books simultaneously.~~
8. ~~Shelving for Braille materials, low vision aids/equipment.~~
9. ~~Auditory electronic dictionaries and calculators.~~
10. ~~Cane racks.~~
11. ~~Television monitor with a video cassette recorder.~~

**R7-6-712. Classroom Lighting Repealed**

- ~~A. Each general, science, and art classroom shall have non-glare, natural light and a light system capable of maintaining at least 50 footcandles of ambient, indirect light and 70 footcandles of direct task lighting, which may include lamps.~~
- ~~B. The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-713. Classroom Temperature Repealed**

- ~~A. Each general, science, and art classroom, and all student resident space shall have a HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.~~
- ~~B. Except in areas where the elevation is above 5,000 feet, defective or non-operable A/C conditioning and evaporative coolers shall be replaced with A/C. Non-air conditioned schools with elevations less than 5,000 feet shall be air conditioned.~~
- ~~C. In the classrooms, the temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~D. A random sample of 10 percent of the student residence space, and the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.~~
- ~~E. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-714. Classroom Acoustics**

- ~~A. The library/media center, the multipurpose room, and each general, science, and art classroom shall be maintainable at a sustained background sound level of the learning and technology center, multiuse space, and each general, science, and art classroom of the ASDB shall be less than 35 decibels.~~
- ~~B. The sound level shall be measured at a work surface in the approximate center of the room, under normal conditions.~~
- ~~C. A random sample of 10 percent of all rooms in each building subject to this requirement shall be measured to determine the room sound level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-715. Classroom Air Quality Repealed**

- ~~A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO<sub>2</sub> level of not more than 800 PPM above the ambient CO<sub>2</sub> level.~~
- ~~B. The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.~~
- ~~C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.~~
- ~~D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.~~

**R7-6-716. Education Classroom Facilities for Disabled Students Repealed**

~~A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.~~

**R7-6-720. Libraries and Media Centers/Research Area Repealed**

- ~~A. A school facility shall have space for students to access research materials, literature, nontext reading materials, and reading books and technology, to permit students to achieve state academic standards~~

~~as prescribed by the State Board of Education. This shall include space for reading, listening, and viewing materials.~~

- ~~B. For an elementary school facility that serves at least 150 students, this space shall be the greater of 1000 square feet or the square footage equal to 325 square feet per student for 10 percent of the student body.~~
- ~~C. For a middle or junior high or high school facility that serves at least 150 students, this space shall be the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.~~
- ~~D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-721 as modified from time to time.~~
- ~~E. A school facility shall have library materials in accordance with R7-6-721 as modified from time to time.~~

**R7-6-721. Equipment for ~~Libraries and Media Centers/~~Research Area Learning and Technology Center**

- ~~A. The standard equipment list for libraries and media centers/research areas is as follows: The learning and technology center of each ASDB campus shall have equipment defined in each student's IEP or as defined in R7-6-221, as appropriate.~~
  - ~~1. Twelve linear feet of library book shelves per blind student and two linear feet of library book shelves per deaf student;~~
  - ~~2. One work surface for every 40 students;~~
  - ~~3. One seat for every eight students;~~
  - ~~4. Two TV's/VCR's;~~
  - ~~5. One overhead projector;~~
  - ~~6. One accessible computer station with Internet access for every 25 students;~~
  - ~~7. One Braille printer;~~
  - ~~8. Ten books per students;~~
  - ~~9. One almanac (may be electronic or hard copy);~~
  - ~~10. One encyclopedia set per 200 students (may be electronic or hard copy);~~
  - ~~11. One atlas (may be electronic or hard copy);~~
  - ~~12. One unabridged dictionary (may be electronic or hard copy); and~~
  - ~~13. At least one set of each of the books listed in subsections (9) through (12) of this Section shall be accessible to blind students.~~

~~B. Each almanac, encyclopedia and atlas shall have a publication date of 2000 or later.~~

**R7-6-725. Cafeterias Repealed**

~~A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one guideline requirement.~~

**R7-6-726. Food Service Repealed**

~~A. A school facility shall have space and fixtures and equipment, in accordance with the standard equipment list in R7-6-727 as modified from time to time, for the preparation, receipt, storage, and service of food to students that is accessible to the serving area. The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R7-6-765(A)(1) and (2).~~

~~B. Food service facilities and equipment shall comply with county health codes.~~

**R7-6-727. Equipment List for Food Service. Repealed**

~~A. A school facility shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:~~

- ~~1. One three-compartment sink.~~
- ~~2. One double stack convection oven for a cooking kitchen or a warming oven.~~
- ~~3. One dishwasher if reusable dishes and silverware are used.~~
- ~~4. One hot food holding appliance.~~
- ~~5. One range with hood.~~
- ~~6. One refrigerator.~~
- ~~7. One freezer.~~
- ~~8. One milk refrigerator.~~

~~B. The items in subsection (A) of this Section may be substituted for a reasonable alternative.~~

**R7-6-730. Auditoriums, Multipurpose Rooms, or Other Multiuse Space Repealed**

~~A school facility shall have a space capable of being used for student assembly sufficient to accommodate one half of the student body plus parents and staff, which shall be the~~

~~same size or larger than an average classroom at the facility. The space must be equal to at least 50 square feet multiplied by one third of the student body. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or indoor physical education).~~

**R7-6-735. Technology Repealed**

- ~~A. Each classroom at a school facility shall have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district wide basis a firewall and filtering software. Each school facility shall have at least one network multimedia computer, available for student use, for every eight students, on a school wide network. Computer equipment is subject to assessment under R7-6-765(A)(1) and (2).~~
- ~~B. A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.~~
- ~~C. Until June 30, 2005, each ASDB campus shall have an application service provider, coupled with an adequate variety of instructional software.~~
- ~~D. When five or more students are provided instruction remotely, at least one classroom in each school facility shall be equipped for distance learning activities, including video conferencing capable of supporting 30 frames per second.~~

**R7-6-740. Transportation Repealed**

- ~~A. Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~
- ~~B. Diesel powered pupil transportation vehicles with more than 250,000 miles or more than 10 years of service, gasoline powered pupil transportation vehicles with more than 150,000 miles or more than 10 years of service, and coach buses with more than 500,000 miles or more than 15 years of service, shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.~~

**R7-6-745. Science Facilities Repealed**

- ~~A. A school facility with students in grades 5 through 12 shall have classroom space to deliver practical science instruction, or classroom space for an alternate science delivery method.~~

1. ~~For grades five through eight no space is required beyond the academic classroom requirement. For grades 9 through 12, 10 square feet per student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is separate and distinct from the academic classroom requirement and may not be used for other instruction.~~
- B.** ~~A school facility with students in grades 5 through 12 that delivers practical science instruction shall have science fixtures and equipment, in accordance with R7-6-746 as modified from time to time. If an alternate science delivery method is used by the ASDB, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-746.~~

**R7-6-746. Equipment List for Science Facilities Repealed**

- A.** ~~Science facilities for students in grades 9 through 12 shall have the following fixtures and equipment:~~
1. ~~One demonstration table with non-corrosive surface per 250 students.~~
  2. ~~Six laboratory stations with a non-corrosive surface per 250 students.~~
  3. ~~One fume hood.~~
  4. ~~One chemical storage unit per 1,000 students.~~
  5. ~~One eye wash/shower per 250 students.~~
  6. ~~One dissecting microscope per 25 students, minimum of the lesser of 12 or one half of the number of eligible students.~~
  7. ~~One refrigerator.~~
- B.** ~~Science facilities for students in grades 5 through 12 shall have the following fixtures and equipment:~~
1. ~~One sink per 250 students.~~
  2. ~~One compound microscope per 25 students, minimum of the lesser of 12 or one half of the number of eligible students.~~
  3. ~~One balance per 250 students.~~

**R7-6-747. Arts Facilities Repealed**

- A.** ~~A school facility with students in grades 7 through 12 shall have space to deliver art education programs including visual, music, and performing arts programs or have access to an alternate delivery method.~~

- ~~B. For grades 7 through 12, ten square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.~~

**R7-6-748. Vocational Education Facilities Repealed**

- ~~A. A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.~~
- ~~B. For grades 7 through 12, forty square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.~~

**R7-6-749. Physical Education and Comprehensive Health Program Facilities Repealed**

- ~~A. A school facility shall have area and space and fixtures, in accordance with R7-6-750 as modified from time to time, for physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.~~
- ~~B. One hundred twenty five square feet per student of comprehensive health space is required. The comprehensive health space is the indoor space available for physical education and this space shall not be included in the academic classroom requirement and this space shall not have more than one function or satisfy more than one guideline requirement.~~

**R7-6-750. Equipment List for Outdoor Physical Education**

- ~~A. A school facility shall have the following equipment and fixtures for physical education:~~
- ~~1. Exterior to the building, one hardscape equivalent in size to an outdoor basketball court size-  
surface area and two goals per 300 students, four court to a maximum of three hardscapes.~~
  - ~~2. Exterior to the building, one baseball/softball backstop.~~
- ~~B. Concrete shall be used when installing basketball courts.~~

**R7-6-751. Alternate Delivery Method Repealed**

~~If an alternate delivery method is used by the ASDB to deliver instruction in art, science, or vocational education, the alternate method must be approved by the ASDB governing board and be capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area.~~

**R7-6-755. Parent Work Space Repealed**

- ~~A. If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by parents.~~
- ~~B. One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.~~

**R7-6-756. Two-way Internal Communication System**

A school facility shall have a ~~network and two-way~~ two-way internal communication system between a central location and ~~each classroom, library, physical education space, and the cafeteria~~ each general and specialty classroom, the learning and technology center, and the cafeteria. The internal communication system shall have both audio and video capabilities.

**R7-6-757. Fire Alarm Repealed**

~~A school facility shall have a fire alarm system as required by the State Fire Marshal. The fire alarm system shall meet current ADAAG requirements.~~

**R7-6-758. Administrative Space**

- ~~A. A school facility shall have space for the use of by the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes, and additional 7.5 square feet per student is required, with a minimum of a space between 150 square feet and a maximum of 2,500 square feet. The maximum may be exceeded and 7.5 square feet per student, as reasonable for the size of the anticipated student body, is required.~~
- ~~B. A school facility shall have a dedicated space in which to isolate a sick student from the other students. This space shall be a designated space that is accessible to a restroom, and large enough to accommodate one cot per 50 students, with a maximum of eight cots. The maximum may be exceeded.~~
- ~~C. A school facility shall have work space available to the faculty. This space that is in addition to any work area available to a teacher, space in or near a classroom. One square foot per student with a maximum of A space between 150 square feet and a maximum of 800 square feet and one square foot per student, as reasonable for the size of the anticipated student body, is required. The maximum may~~

~~be exceeded. The space may be divided into more than one room. This~~ The faculty work space may be in multiple locations throughout the school facility and may have more than one function.

- D. A 9,500 square foot facility used for the administration of the Arizona School for the Deaf and Blind shall also be available.

**R7-6-760. ~~Laws and Building Codes~~ Repealed**

- A. ~~To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building.~~
- B. ~~At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.~~

**R7-6-761. ~~Energy Saving Measures~~ Repealed**

~~New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within eight years of the installation.~~

**R7-6-765. ~~Building Systems~~ Repealed**

- A. ~~Building systems in a school facility must be in working order and capable of being properly maintained. A building system shall be considered to be in “working order and capable of being maintained,” if all of the following:~~
- ~~1. The system is capable of being operated as intended and maintained.~~
  - ~~2. Newly manufactured or refurbished replacement parts are available.~~
  - ~~3. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years.~~
  - ~~4. The system is capable of supporting the gross square footage standard and minimum school facility guidelines established in this Article.~~
  - ~~5. Components of the system present no imminent danger of personal injury.~~
- B. ~~Building systems include, as required by law, roof, plumbing, telephone, electrical, and heating and cooling systems as well as fire alarm, twoway internal communication, computer cabling, and existing security systems.~~

**R7-6-770. ~~Building Structural Soundness~~ Repealed**

~~A school facility must be structurally sound. A school facility shall be considered structurally sound if the building presents no imminent danger or major visible signs of decay or distress, and the remaining life expectancy of the building structure appears to be at least a minimum of three years.~~

**R7-6-771. Exterior Envelope, Interior Surfaces and Interior Finishes Repealed**

~~The exterior envelope, interior surfaces, and interior finishes at school facilities must be safe and capable of being maintained.~~

- ~~1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are weather tight under normal conditions with routine upkeep;
  - b. Doors and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.~~
- ~~2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use with normal maintenance and repair for at least three years after the initial statewide assessment.~~
- ~~3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years after the initial statewide assessment.~~

**R7-6-775. Minimum Gross Square Footage Repealed**

~~The ASDB shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for the ASDB as determined by law, based on number and grade distribution of the students served by the ASDB.~~

**R7-6-776. Assessment of Minimum Gross Square Footage Repealed**

- ~~A. Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.~~

- ~~B. The gross square footage of a school facility equals all space within the facility excluding space used for ASDB administrative purposes.~~
- ~~C. The gross square footage of the ASDB shall equal the sum of the gross square footage of each school facility owned by the ASDB.~~
- ~~D. The minimum gross square footage of the ASDB equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by the minimum adequate gross square footage requirements per pupil, applicable to the ASDB for such grade or program.~~
- ~~E. For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the ASDB.~~

**R7-6-780. Student Boarding Space**

Each ASDB campus shall provide safe and sanitary student boarding for resident ASDB students as follows:

1. A student dormitory consisting of a shared living area, resident and kitchen, and a bedroom for each student in grades preschool kindergarten through grade 12. at a ratio of The student dormitory shall provide at least 400 square feet of space per student., and
2. A bedroom for each Resourcee housing at a ratio of 150 square feet per occupant,
3. One live-in assistant housing (apartment) for every eight resident students at a ratio of 500 square feet per live-in assistant.
4. One laundry room for every student dormitory. The laundry room shall provide at least at a ratio of 100 square feet of space for every eight resident students.
5. All independent living dormitory space shall be constructed with 300 square feet per student with no fewer than two students per dormitory.

**R7-6-781. Facility Requirements for ASDB Program Requirement Facilities Programs**

- ~~A. Each ASDB campus shall provide minimum facilities required the following minimum square footage of space to support the ASDB audiology program specified: requirements at a ratio of five square feet per deaf student and one square foot per blind student.~~
  1. Audiology program. Five square feet per deaf student and one square foot per blind student;
  2. Auditory training and speech therapy program. Three square feet per deaf student and one square foot per blind student;
  3. Low-vision program. Three square feet per student;

4. Occupational and physical therapy program. Five square feet per student with a minimum of 1,500 square feet; and
  5. Orientation and mobility program. Six square feet per blind student.
- ~~B. Each ASDB campus shall provide minimum facilities required to support ASDB auditory training and speech therapy program requirements at a ratio of three square feet per deaf student and one square foot per blind student.~~
  - ~~C. Each ASDB campus shall provide minimum facilities required to support ASDB low vision program requirements at a ratio of three square feet per student.~~
  - ~~D. Each ASDB campus shall provide minimum facilities required to support ASDB occupational and physical therapy program requirements at a ratio of five square feet per student with a minimum of 1,500 square feet.~~
  - ~~E. Each ASDB campus shall provide minimum facilities required to support ASDB orientation and mobility program requirements at a ratio of six square feet per blind student.~~
  - ~~F. Each ASDB campus shall provide a distance learning classroom required to support ASDB program requirements. This facility shall be at a minimum a 600 square foot separate/dedicated space for teaching to satellite, remote, and shared schools.~~

**R7-6-782. Student Health Center**

Each ASDB boarding campus shall have space for a student health center. The student health center shall have at a ratio of least 13 square feet of space per student.

**R7-6-783. Parent Outreach Program Repealed**

~~Each ASDB campus shall have space for a Parent Outreach Program at a ratio of 10 square feet per family with students enrolled at the campus with a minimum area of 300 square feet.~~

**R7-6-790. Guidelines Exception Repealed**

~~The Board may grant an exception from any of the guidelines requirements, upon agreement between the Board and the school district. The Board shall grant an exception if it determines that the intent of the guideline is capable of being met by the ASDB in an alternate manner. If the Board grants the exception, the ASDB shall be deemed to meet the guideline and is not eligible for state funding to meet the guideline.~~

## TITLE 7. EDUCATION

### CHAPTER 6. SCHOOL FACILITIES BOARD

*Editor's Note: The Office of the Secretary of State publishes all Code Chapters on white paper (Supp. 01-4).*

*Editor's Note: This Chapter contains rules which were adopted, amended, repealed, or renumbered under an exemption from the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6), pursuant to Laws 1998, 5th Special Session, Chapter 1, section 55, as amended by Laws 1999, Chapter 299, section 39. Because this Chapter contains rules which are exempt from the regular rulemaking process, it is printed on blue paper.*

*Title 7, Chapter 6, adopted by exempt rulemaking at 6 A.A.R. 597, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1).*

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### EXHIBIT A. REPEALED

### ARTICLE 1. DEFINITIONS

#### R76101. Definitions

In this Chapter, unless otherwise specified, the following terms mean:

1. "Ambient CO2 Level" means the carbon dioxide level of the outside air.
2. "All weather surface" means a vehicular use and/or parking area that shall be surfaced with one of the following: asphalt, concrete, chip seal, graded and compacted gravel, or other stabilized system.
3. "Area" means exterior covered or uncovered portion of a school site.
4. "Board" means the School Facilities Board.
5. "Decibel" means a unit in which various acoustical hearing level quantities are expressed.
6. "Eligible students" means eligible students as defined in A.R.S. § 15901(A)(9).
7. "Equipment" means a specified item not affixed to the real property of a school facility.
8. "Executive Director" means Executive Director of the School Facilities Board as set forth in A.R.S. § 15-2002(C).
9. "Exterior envelope" means the exterior walls, floor, and roof of a building.
10. "Fixture" means a specified item that is affixed to the real property of a school facility.
11. "Footcandle" means the direct light thrown, on a square foot of surface, by a candle 7/8 inch in diameter burning at 7.776 grams per hour.
12. "FTE" means fulltime equivalent.
13. "General Classroom" means a classroom space that is or can be appropriately configured for instruction in at least the areas of language arts, mathematics, and social studies.

14. "HVAC" means heating, ventilation, and air conditioning system. This does not necessarily mean a refrigerated air conditioning system.
15. "Normal Conditions" means occupancy during regular school hours while the building system is operating.
16. "PPM" means parts per million.
17. "Pupil" means student.
18. "Pupil transportation vehicle" means a bus used to transport eligible students between their residence and a school facility for the academic day or a vehicle used to transport eligible disabled students between their residence and a school facility for the academic day.
19. "Random" means arbitrary selection through a process of assigning numbers to each classroom in each building to be assessed.
20. "School facility" means a building or group of buildings and outdoor area that are administered together to comprise a school campus.
21. "School site" means one or more parcels of land where a school facility is located. More than one school facility may be located on a school site.
22. "Space" means square footage located within the interior of a building.
23. "Specialty classroom" means a classroom space that is or can be appropriately configured for instruction in a specific subject such as science, physical education, or art.
24. "Student body" means the number of students at a school facility.
25. "Student" means the number of students in average daily membership. Average daily membership is defined as the attending average enrollment of fractional students and full time students, minus withdrawals, of each school day through the first 100 days in session, not adjusted for average daily attendance.
26. "Transportation capacity" means the number of passenger seats, according to manufacturer specifications, available on all of the pupil transportation vehicles owned by the school district, multiplied by two.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Amended by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 2. MINIMUM SCHOOL FACILITY GUIDELINES**

**R76201. Application**

The provisions of this Article are applicable to a school facility and equipment that are necessary to meet the minimum school facility guidelines established in this Article or to meet the gross square footage standards prescribed by law.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-205. School Site**

- A. A school site shall have safe access, parking, drainage, security, and area to accommodate a school facility that complies with the minimum gross square footage requirements established in A.R.S. § 152011, for the number of students at the school facility and that comply with these guidelines.
- B. "Safe access" means a student drop off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or by using a designated crosswalk. Any student drop off area that is used by a bus must be configured to accommodate bus width and turning requirements.
- C. "Parking" means a maintainable all weather surfaced area that is large enough to accommodate one parking space per staff FTE and one visitor parking space per 100 students. If this definition is not met, the sufficiency of the parking at the site is subject to review by the Board using the following criteria:
  1. Availability of street parking around the school;
  2. Availability of any nearby parking lots;
  3. Availability of public transit;
  4. Number of staff that drive to work on a daily basis; and
  5. The average number of visitors on a daily basis.
- D. "Drainage" means that a school site is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare.
- E. "Security" means a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades one through six. This definition is met if the entire school is fenced or walled. If this definition is not met, the sufficiency of security at the site is subject to review by the Board using the following criteria:
  1. Amount of vehicular traffic near the school site;
  2. Existence of hazardous or natural barriers on or near the school site;
  3. The amount of animal nuisance near the school site; and
  4. Visibility of the play/physical education area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76210. Academic Classroom Space**

- A. A school district shall have school facilities with cumulative classroom square footage of 32 square feet

for each student in programs for preschool children with disabilities, kindergarten programs and grades one through three in the district.

- B. A school district shall have school facilities with cumulative classroom square footage of 28 square feet for each student in grades four through six in the district.
- C. A school district shall have school facilities with cumulative classroom square footage of 26 square feet for each student in grades seven and eight in the district.
- D. A school district shall have school facilities with cumulative classroom square footage of 25 square feet for each student in grades 9 through 12 in the district.
- E. For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes.
- F. For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- G. For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- H. Classroom space is measured from interior wall to interior wall.
- I. The amount of classroom space per student specified in this Article accounts for required teaching space.
- J. The square footage of a general classroom is not counted as specialty classroom square footage.
- K. The square footage of a specialty classroom is not counted as general classroom square footage.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76211. Classroom Fixtures and Equipment**

- A. Each general and specialty classroom shall contain a work surface and seat for each student in the classroom. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room. A work surface and seat are adequate if the items are:
  - 1. Safe; and
  - 2. Maintainable.
- B. Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction and a display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet.
- C. Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.
- D. Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and secure storage for student records, that is located in the classroom or is convenient to access from the classroom.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76212. Classroom Lighting**

- A. Each general, science, and art classroom shall have a light system capable of maintaining at least 50 footcandles of light.
- B. The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.
- C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility.
- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76213. Classroom Temperature**

- A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.
- B. Except in areas where the elevation is above 5,000 feet, defective or non-operable air conditioners and evaporative coolers shall be replaced with air conditioning. Non-air conditioned schools with elevations less than 5,000 feet shall be air-conditioned.
- C. The temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- D. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.
- E. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76214. Classroom Acoustics**

- A. Each general, science, and art classroom shall be maintainable at a sustained background sound level of less than 55 decibels.
- B. The sound level shall be measured at a work surface in the approximate center of the classroom, under

normal conditions.

- C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom sound level for the school facility.
- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76215. Classroom Air Quality**

- A. Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO2 level of not more than 800 PPM above the ambient CO2 level.
- B. The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- C. A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom air quality level for the school facility.
- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76216. Education Classroom Facilities for Disabled Students**

A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76220. Libraries and Media Centers/Research Area**

- A. A school facility shall have space for students to access research materials, literature, nontext reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. This shall include space for reading, listening, and viewing materials.
- B. For an elementary school facility that serves at least 150 students, this space shall be the greater of 1000 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- C. For a middle or junior high or high school facility that serves at least 150 students, this space shall be the greater of 1200 square feet or the square footage equal to 20 square feet per student for 10 percent of the student body.
- D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-221 as modified from time to time.
- E. A school facility shall have library materials in accordance with R7-6-221 as modified from time to time.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-221. Equipment for Libraries and Media Centers/Research Area**

- A. The standard equipment list for libraries and media centers/research areas is as follows:
  - 1. One linear foot of library book shelves per student;
  - 2. For a school of 150 or more students, one work surface for every 20 students, minimum of 15, maximum of 75;
  - 3. For a school of 150 or more students, one seat for every 20 students, minimum of 15, maximum of 75;
  - 4. One TV/VCR;
  - 5. One overhead projector;
  - 6. Ten books per students;
  - 7. One almanac (may be electronic or hard copy);
  - 8. One encyclopedia set per 200 students (may be electronic or hard copy);
  - 9. One atlas (may be electronic or hard copy); and
  - 10. One unabridged dictionary (may be electronic or hard copy).
- B. Each almanac, encyclopedia and atlas shall have a publication date of 2000 or later.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76225. Cafeterias**

A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one guideline requirement (auditorium and/or indoor physical education).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76226. Food Service**

- A. A school facility shall have space and fixtures and equipment, in accordance with the standard equipment list in R7-6-227 as modified from time to time, for the preparation, receipt, storage, and service of

food to students that is accessible to the serving area. The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R76265(A)(1) and (2).

- B. Food service facilities and equipment shall comply with county health codes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-227. Equipment List for Food Service.**

- A. A school facility shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:
1. One three-compartment sink.
  2. One double stack convection oven for a cooking kitchen or a warming oven.
  3. One dishwasher if reusable dishes and silverware are used.
  4. One hot food holding appliance.
  5. One range with hood.
  6. One refrigerator.
  7. One freezer.
  8. One milk refrigerator.
- B. The items in subsection (A) of this Section may be substituted for a reasonable alternative.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76230. Auditoriums, Multipurpose Rooms, or Other Multiuse Space**

A school facility shall have a space capable of being used for student assembly sufficient to accommodate one-third of the student body, which shall be the same size or larger than an average classroom at the facility. The space must be equal to at least seven square feet multiplied by one-third of the student body. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or indoor physical education).

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76235. Technology**

- A. Each classroom at a school facility shall have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district-wide basis a firewall and filtering software. Each school facility shall have at least one network multimedia computer, available for student use, for every eight students, on a school wide network. Computer equipment is subject to assessment under R76265(A)(1) and (2).
- B. A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.
- C. Until June 30, 2005, each district shall have an application service provider, coupled with an adequate variety of instructional software.
- D. In order to meet the requirements of this Section, should a school district have an application service provider in place, the school district may also meet the requirements of subsection (A) of this Section by purchasing thin client terminals or network appliances with full access to the Internet, equipped with a 13" screen or larger monitors.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76240. Transportation**

- A. Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- B. Diesel powered pupil transportation vehicles with more than 400,000 miles and gasoline powered pupil transportation vehicles with more than 200,000 miles shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- C. Diesel powered pupil transportation vehicles with more than 266,800 miles and gasoline powered pupil transportation vehicles with more than 133,400 miles shall be replaced if at least one-half of the miles accumulated on the vehicle were driven on unpaved roads and if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76245. Science Facilities**

- A. A school facility with students in grades 5 through 12 shall have classroom space to deliver practical science instruction, or classroom space for an alternate science delivery method.
1. For grades five through eight no space is required beyond the academic classroom requirement. For grades 9 through 12, four square feet per student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.
- B. A school facility with students in grades 5 through 12 that delivers practical science instruction shall have science fixtures and equipment, in accordance with R7-6-246 as modified from time to time. If an alternate science delivery method is used by a district, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-246.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-246. Equipment List for Science Facilities**

- A.** Science facilities for students in grades 9 through 12 shall have the following fixtures and equipment:
1. One demonstration table with non-corrosive surface per 250 students.
  2. Six laboratory stations with a non-corrosive surface per 250 students.
  3. One fume hood.
  4. One chemical storage unit per 1,000 students.
  5. One eye wash/shower per 250 students.
  6. One dissecting microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  7. One refrigerator.
- B.** Science facilities for students in grades five through 12 shall have the following fixtures and equipment:
1. One sink per 250 students.
  2. One compound microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  3. One balance per 250 students.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76247. Arts Facilities**

- A.** A school facility with students in grades 7 through 12 shall have space to deliver art education programs including visual, music, and performing arts programs or have access to an alternate delivery method.
- B.** For grades 7 through 12, four square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76248. Vocational Education Facilities**

- A.** A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.
- B.** For grades 7 through 12, four square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space is included in the academic classroom requirement and may be used for other instruction.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76249. Physical Education and Comprehensive Health Program Facilities**

- A.** A school facility shall have area and space and fixtures, in accordance with R7-6-250 as modified from time to time, for physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B.** For schools designed for 20-50 students, the indoor space available for physical education must be one single space of at least 1,600 square feet. For schools designed for 50 to 125 students, the indoor space available for physical education must be one single space of at least 2,600 square feet. For schools designed for more than 125 students, the total indoor space available for physical education must be at least 5,100 square feet and one single space that is at least 2,600 square feet must be available. This space may have more than one function and may fulfill more than one guideline requirement (cafeteria and/or auditorium). The comprehensive health space is the indoor space available for physical education.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-250. Equipment List for Physical Education**

- A.** A school facility shall have the following equipment and fixtures for physical education:
1. Exterior to the building, one basketball court size surface area and two goals per 300 students, four court maximum.
  2. Exterior to the building, one baseball/softball backstop.
- B.** Concrete shall be used when installing basketball courts.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76251. Alternate Delivery Method**

If an alternate delivery method is used by the district to deliver instruction in art, science, or vocational education, the alternate method must be approved by the school district governing board and be capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76255. Parent Work Space**

- A.** If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by parents.

- B.** One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76256. Two-way Internal Communication System**

A school facility shall have a network and two-way internal communication system between a central location and each classroom, library, physical education space, and the cafeteria.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76257. Fire Alarm**

A school facility shall have a fire alarm system as required by the State Fire Marshal.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76258. Administrative Space**

**A.** A school facility shall have space for the use of the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes and additional 1.5 square feet per student is required, with a minimum of 150 square feet and a maximum of 2,500 square feet. The maximum may be exceeded.

**B.** A school facility shall have space to isolate a sick student from the other students. This space shall be a designated space that is accessible to a restroom, large enough to accommodate one cot per 200 students, with a maximum of four cots. The maximum may be exceeded.

**C.** A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, in or near a classroom. One square foot per student with a maximum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76260. Laws and Building Codes**

**A.** To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building. Existing school buildings are not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.

**B.** At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-261. Energy Saving Measures**

New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within eight years of the installation.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76265. Building Systems**

**A.** Building systems in a school facility must be in working order and capable of being properly maintained. A building system shall be considered to be in "working order and capable of being maintained," if all of the following:

1. The system is capable of being operated as intended and maintained.
2. Newly manufactured or refurbished replacement parts are available.
3. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years.
4. The system is capable of supporting the gross square footage standard and minimum school facility guidelines established in this Article.
5. Components of the system present no imminent danger of personal injury.

**B.** Building systems include, as required by law, roof, plumbing, telephone, electrical, and heating and cooling systems as well as fire alarm, twoway internal communication, computer cabling, and existing security systems.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76270. Building Structural Soundness**

A school facility must be structurally sound. A school facility shall be considered structurally sound if the building presents no imminent danger or major visible signs of decay or distress, and the remaining life expectancy of the building structure appears to be at least a minimum of three years.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76271. Exterior Envelope, Interior Surfaces and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes at school facilities must be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are weather tight under normal conditions with routine upkeep;
  - b. Doors and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use with normal maintenance and repair for at least three years after the initial statewide assessment.
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years after the initial statewide assessment.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76275. Minimum Gross Square Footage**

Each school district shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for such district as determined by law, for such district based on number and grade distribution of the students served by the district.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76276. Assessment of Minimum Gross Square Footage**

- A. Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.
- B. The gross square footage of a school facility equals all space within the facility excluding space used for district administrative purposes.
- C. The gross square footage of a district shall equal the sum of the gross square footage of each school facility in the district.
- D. The minimum gross square footage of a district equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by the minimum adequate gross square footage requirements per pupil, applicable to the district for such grade or program.
- E. For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the district.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76285. Guidelines Exception**

The Board may grant an exception from any of the guidelines requirements, upon agreement between the Board and the school district. The Board shall grant an exception if it determines that the intent of the guideline is capable of being met by the school district in an alternate manner. If the Board grants the exception, the school district shall be deemed to meet the guideline and is not eligible for state funding to meet the guideline.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 3. SQUARE FOOTAGE CALCULATIONS****R76301. Square Footage Calculations**

- A. A school district may use Class A bonds to supplement any project funded by the School Facilities Board pursuant to A.R.S. § 15-2021 or A.R.S. § 15-2041. Pursuant to A.R.S. § 5-2002(H), when a school district adds square footage to the district through the construction of a new school using Class A bonds, the School Facilities Board shall not provide funding to supplement the new school construction.
- B. When a school district adds square footage to the district through the construction of a new school using either Class B bonds, or unrestricted capital outlay monies, the School Facilities Board shall not include the square footage of the new school in the gross square footage of the school district for purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for determining needs for additional square footage pursuant to A.R.S. § 15-2011 and A.R.S. § 15-2041.
- C. When a school district adds square footage to the district through the construction of a new school using Class A bonds, the School Facilities Board shall include the square footage of the new school in the gross square footage of the school district for purposes of calculating building renewal distributions pursuant to A.R.S. § 15-2031 and for determining needs for additional square footage pursuant to A.R.S. § 15-2011 and A.R.S. § 15-2041.
- D. A school district that uses Class B bonds and/or unrestricted capital outlay monies to add or replace square footage at existing schools shall have the additional square footage or replacement square footage treated as follows:
  1. A school district that adds square footage to an existing school with the use of Class B bonds or unrestricted capital outlay monies shall not have the additional square footage included in the determination

of minimum adequate square footage pursuant to A.R.S. § 15-2011(C), but the School Facilities Board shall consider the additional square footage for purposes of determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285.

2. A school district that both removes and adds square footage with the use of Class B bonds or unrestricted capital outlay monies shall not have the net additional square footage included in the determination of minimum adequate square footage pursuant to A.R.S. § 15-2011(C), but the School Facilities Board shall consider the net additional square footage for purposes of determining adequacy of the functional components of the school as specified in the Minimum School Facilities Guidelines set forth in R7-6-201 through R7-6-285.
  3. For purposes of calculating building renewal pursuant to A.R.S. § 15-2031, replacement square footage constructed with Class B bonds or unrestricted capital outlay monies shall be included, but net additional square footage shall be excluded.
  4. If square footage is replaced at an existing school with the use of Class B bonds or unrestricted capital outlay monies, the student capacity of the facility after completion of the project will be determined in the same manner as it would have been determined prior to the addition. If Class B bonds or unrestricted capital outlay monies are used to construct a complete replacement school, the student capacity of the facility once the project is completed will be based on the provisions of A.R.S. § 15-2011(C).
  5. For purposes of this Section, replacement square footage is defined as square footage constructed with Class B bonds or unrestricted capital outlay monies that replaces existing square footage.
- E.** If square footage is added to or replaced at an existing school with the use of Class A bonds, the student capacity of the facility after completion of the project will be determined in the same manner as it would have been determined prior to the addition.
- F.** The method of computing the funding and square footage for any expansion of a core facility previously funded by the School Facilities Board shall follow the same method that was used for computing the original core facility.

#### **Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76302. Modification of Square Footage for Geographic Factors**

- A.** In those school districts where students are transported one hour or more via the most reasonable and direct route or where students reside 45 miles or more from the closest school via the most reasonable and direct route, and where 100 or more students are affected by these conditions within the same region, the School Facilities Board shall provide additional school space to the district to accommodate the educational needs of the affected students. However, the educational space provided may be modified as the Board sees fit in making a conscientious effort to meet the Minimum Adequacy Guidelines without requiring extraordinary expenditures of public funds.
- B.** If an elementary school district that is not in a high school district unifies after June 30, 2005, the resulting unified school district may qualify for high school space under A.R.S. § 15-2041 if it meets the following criteria:
1. The elementary school district unifies after June 30, 2005; and
  2. The resulting unified school district is projected to have more than 350 resident high school students being served in school districts other than the student's resident school district within three years following the current fiscal year; and
  3. One of the following is true:
    - a. At least 350 of the high school students would travel 20 miles or more to the receiving school facility; or
    - b. The receiving school district is projected to need additional high school space within seven years. For purposes of this analysis, the projected average daily membership of the receiving district includes the high school students of both the receiving and sending districts.

#### **Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4). Amended by final rulemaking at 12 A.A.R. 3988, effective December 4, 2006 (Supp. 06-4).

### **ARTICLE 5. NEW SCHOOL AND LAND FUNDING**

#### **R76501. Capital Plans**

If a school district's capital plan, developed pursuant to A.R.S. § 15-2041, indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall complete the capital plan packet issued by the School Facilities Board and return the packet to the Board by the announced deadline.

#### **Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-502. Funding for New Schools or Additional Square Footage**

- A.** The data submitted by each school district requesting additional square footage under the capital plan shall be reviewed by staff to determine student capacity. Additionally, staff shall review and verify district

student population projections and the existing square footage in the district. The staff shall prepare a New Construction Analysis for the district.

- B.** If the proposed new school facilities are located in territory in the vicinity of a military airport as defined in A.R.S. § 28-8461, the Board shall provide notice to the military airport of the proposed new school facility construction and seek the military airports comments and analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport operations that may have an adverse effect on public health and safety. The Board shall consider and analyze the comments and analysis provided by the military airport prior to making a final determination to fund the new square footage.
- C.** The Board shall make a decision regarding the number of square feet and students to be funded for the district, the appropriate cost per square foot and the total budget. At the time the Board is making its decision, the New Construction Analysis shall be available to the Board members and the school district. The school district may address the Board at this time.
- D.** A school district that is approved for additional square footage shall have 60 days from the date of notification to officially accept, in writing, funding for the square footage approved by the Board or the approval shall expire. After a school district has accepted a project in writing and has signed the Terms and Conditions for New School Funding, the Board shall provide five percent of the monies approved for architectural and engineering fees for projects of \$500,000 or more. The individual school district shall be responsible for establishing the actual A and E amount.
- E.** A school district that receives approval for additional square footage from the Board shall proceed with the design development plan and specifications for the project. Two copies of the proposed educational goals or specifications and schematic design, with budget estimates are required to be submitted to the Board's staff. The items required to be included in the estimated budget are all elements of new construction, excluding land acquisition. These elements include, but are not limited to:
1. Architectural and engineering fees;
  2. Survey, testing, permits, advertising and printing;
  3. Construction costs;
  4. Furniture, fixtures and equipment;
  5. Any necessary project management; and
  6. A five percent contingency amount.
- After Board staff review, the school district shall proceed with a preliminary bid package.
- F.** If the school district includes reasonable upgrades to the new construction project for energy conservation purposes, the Board shall provide funding upgrades above the formula based award to cover the full amount of the upgrade. Upgrades will only be funded if the upgrade receives pre-approval by the Board staff and the school district architect or engineer certifies that the upgrade will provide dollar savings in excess of the cost of the upgrade within an eight-year period.
- G.** Upon review of the submitted schematic design, budget estimates and preliminary bid package, the Board's staff shall make a recommendation to the Board regarding the appropriateness of the school district to proceed with the additional square footage and the efficiency and effectiveness of the plan. The staff recommendation shall be based on whether the project is within the original scope and Board approved budget (including square footage and number of students), the project meets the building adequacy standards, initial comments from the local building authority and whether revised student population projections continue to justify the additional square footage. If the Board approves the project, the school district shall be authorized to proceed with the final bid package. Prior to authorization to contract the school district shall document that it has obtained local (city, county or equivalent) building department approval. For projects outside of the original scope and /or Board approved budget or that do not meet the minimum adequacy guidelines, the Board may instruct the school district to resubmit the project, or the Board may make an alternative decision. Local funds may be used by the school district in conjunction with the Board approved funding.
- H.** Upon receipt of bids by the school district, the Executive Director shall authorize the district to proceed with the contract if the school district has documented that it has obtained local (city, county or equivalent) building department approval, and the bid is within the original scope and Board approved budget, and meets the building adequacy standards. The Executive Director may make an alternative recommendation to the full Board.
- I.** The Board-approved funding for additional square footage shall be available to the school district for one year from the date of notification. The bid process shall be completed within the one-year period. The Board shall consider requests for an extension beyond the one year and may grant an extension for good reason.
- J.** The Board may modify or waive the requirements of this Section for good cause.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-503. Funding for Land**

- A.** The School Facilities Board follows a three-step approval process for the funding of land that is classified as Step One - Justification of Need for Land; Step Two - Request to Purchase a Specific Site; and Step Three - Due Diligence. The executive director may deviate from the three-step approval process to meet other circumstances as they arise, such as purchasing state-owned land and condemnation and bring such recommendations to the full Board.
- B.** Step One is the initial request for land for new construction. A school district that currently owns land shall demonstrate that the district-owned property is not suitable for the needed new school in order for the school district to receive funding for the acquisition of land.
- C.** Step Two includes the following:
1. The school district shall provide a map of the district showing current schools and the projected student population, grade levels served and attendance boundaries in various locations in the district, which supports the location of the new school at the requested site. The school district shall also provide a listing of vacant parcels currently owned by the school district (including the size of each parcel and its location),

describe the site selection process, explain why the site requested was chosen over alternative sites, and summarize any joint use provisions or other intergovernmental agreements related to the site. The school district shall also provide a legal description of the desired site, the size of the site and an estimate of the cost of the site. The school district may provide information on more than one site.

2. The Board shall make a decision regarding the site size for each site. The range of acreage table approved by the Board is provided to allow school districts some leeway in site selection. The school district shall provide special justification if the site size is not within the range shown on the range of acreage table. Allowances shall not be granted for additional acreage for limited use activities that are only remotely related to the teaching and learning enterprise. Limited use activities would include, but not be limited to, athletic fields that are only used for interscholastic competition rather than daily activities, and non-school related community functions. The site size will be based on the eventual size of the school, if expansion is planned. The school district may request a larger or smaller site if conditions require. The school district may purchase additional acres with local funds. School districts should give careful consideration to joint-use sites such as those which adjoin community parks and play grounds. The ranges indicated are not intended to dictate a minimum acreage if a joint-use agreement provides the school with access to adjoining public space.
  3. If a school district needs monies to verify, gather and submit the information required in Step Three, the school district shall submit a cost estimate to the Board, and the Board shall approve or disapprove the request for monies. Rather than allocating monies to a school district to verify, gather and submit information required in Step Three, the Board may approve the staff of the School Facilities Board to contract directly for such services, in which case the contractors will be paid directly by the Board.
- D.** If the school district receives approval to proceed to Step Three, the following information about the site shall be acquired:
1. An appraisal of the land that documents that the proposed cost is at or below the fair market value.
  2. Legal description of the land.
  3. Level one environmental assessment, plus the following factors (if not included):
    - a. Hazardous materials
    - b. Archaeology
    - c. Endangered flora and fauna
    - d. Noise
    - e. Soil Conditions
    - f. Adjacent land owners and/or uses
  4. Boundary and Topographical Survey
  5. Drainage statement
  6. Site development cost
  7. Photographic survey (if required by planning and zoning departments)
  8. Feasibility site diagram-conceptual study by a design professional illustrating proposed development of the site (based on the eventual size of the school, if there are plans for expansion), indicating:
    - a. Property lines and measurements
    - b. Setbacks, right-of-ways, and easements
    - c. Vehicular access and parking
    - d. Pedestrian and bicycle access
    - e. Building zone
    - f. Drainage concept
    - g. Utility routes or systems
    - h. Activity fields and courts
    - i. Limit-lines and calculation of usable area
    - j. Existing features to be demolished or preserved
    - k. Future expansion capability
- E.** Final distribution of monies to purchase the site may be made by the Board if Step Three reveals no serious problem with the site. If the actual cost of the site does not exceed the Board approved amount the Executive Director may make the final determination of site funding without further action by the Board. If monies were distributed to the school district to verify, gather and submit the information required based on a cost estimate, an adjustment for the actual cost shall be made at the time of the final distribution. The school district shall provide documentation to the Board of the actual expenditures from the monies provided and the actual closing costs within 60 days of the final distribution. Expenditures exceeding the amount provided pursuant to subsection (C)(3) of this Section require approval by the Board. If the site is rejected as a result of information gathered in Step Three, the school district may repeat Steps Two and Three with a new site.
- F.** The Board may modify or waive the requirements of this Section for good cause.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-504. Donations of Real Property**

- A.** A school district seeking to acquire real property by donation pursuant to A.R.S. § 15-2041 shall complete the school site and school facility donation information requirements form and submit the form to the School Facilities Board. The information requested on the form for land shall include, among other items, a district map identifying existing school sites and facilities, student population and the location of the donation. The information requested on the form for a facility shall include, among other items, the size of the facility, grade levels served and location. If all of the information required is not available and if a school district needs monies to verify, gather and submit the information required, it shall submit a cost estimate at the same time it submits the information that is available.
- B.** If all information is available, the School Facilities Board staff shall analyze the request to accept the donation and make a recommendation to the Board. If all information is not available, the School Facilities

Board staff shall analyze the request on the basis of whether the school district should be awarded the funds necessary to complete the information gathering process, and shall make a recommendation to the Board. At the time the Board is making its decision, the staff analysis and recommendation shall be available to the School Facilities Board members and the applicant school district. The applicant school district may address the Board.

- C. If the Board approval is to award funds necessary to complete the information gathering process, the district shall be notified by the Board Staff and upon acceptance may proceed to gather the additional information required. Once the additional information is submitted to the Board, the Staff shall analyze the request to accept the donation and make a recommendation to the Board as stated in subsection (B).
- D. If the Board approves the district request to accept the donation, the Board staff shall notify the district. The distribution of 20 percent of the value of the accepted donation pursuant to A.R.S. § 15-2041 shall be awarded to the school district upon notification to the Board that the donation has been accepted by the district. The district shall submit documentation of its governing board action and documentation that the property title has been transferred to the district. Upon receipt of this documentation Board staff shall be authorized to distribute the approved 20 percent amount.
- E. If monies were distributed to the district to verify, gather and submit the information required based on an estimated cost, an adjustment for the actual cost shall be made at the time of the final distribution. The district shall provide documentation to the Board of the actual expenditures from the monies provided. Expenditures exceeding any amounts provided pursuant to R7-6-503(C)(3) shall require approval by the Board.
- F. In determining whether the real property proposed for donation is at an appropriate school site, the School Facilities Board Staff analysis shall be based on the following:
  - 1. Location of the proposed donation of real property.
  - 2. District needs for additional student capacity.
  - 3. District needs for additional land (for site donations only).
  - 4. Usable acres proposed for donation, taking into consideration School Facilities Board adopted usable acreage requirements.
  - 5. The ability of a proposed site donation to accommodate a school facility that meets the minimum adequacy guidelines (for site donations only), or the adequacy of a proposed school facility donation.
  - 6. Estimated site development costs.
  - 7. Age and condition of the real property (for facility donation only).
  - 8. Portion of real property that can be used for academic purposes.
- G. If the School Facilities Board Staff recommendation is to authorize the district to accept the donation, the Staff shall prepare a recommended 20 percent distribution amount. The 20 percent distribution recommendation will be based on the fair market value of the real property proposed for donation that is usable for academic purposes.
- H. The Board may waive or modify the requirements of this Section for good cause.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-505. Constructing Bond-Funded Schools on Land Funded by the School Facilities Board**

- A. A school district that acquires land by sale or lease pursuant to A.R.S. § 15-2041 may construct a school facility on that land using Class A bonds. The square footage of the new facility shall be included in the gross square footage of the school district for purposes of determining needs for additional square footage and building renewal distributions.
- B. A school district that acquires land by sale or lease pursuant to A.R.S. § 15-2041 may construct a school facility on that land using Class B bonds provided that the school district agrees in writing that when the school district qualifies for a new school funded by the School Facilities Board that the School Facilities Board will not provide funding for the lease or purchase of an additional site for that school. The square footage of the new facility constructed with Class B bond monies shall not be included in the gross square footage of the school district for purposes of determining needs for additional square footage and building renewal distributions.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-506. Providing Technical Assistance in the Form of Project Management**

- A. A school district that does not have the experience or resources to successfully oversee a new school construction project may request technical support from the Board pursuant to A.R.S. § 15-2002(13) in the form of project management services.
- B. The Executive Director may approve the project management request. Should the Executive Director deny the request, the school district has the right to appeal the decision to the Board.
- C. The cost of the project management shall be made a part of the overall cost of the new school, and those funds shall be derived from the total allocation for the project provided by the School Facilities Board. Should the allocation of funds that the district receives pursuant to A.R.S. § 15-2041 satisfy the base cost of the new school plus the cost of the project management, then the Board shall not provide any additional funds for project management services.
- D. If the school district's request for project management services is approved, the school district shall agree to reimburse the Board from its allocated funds for the cost of any independent contractors that the Board uses to provide the project management services.
- E. The Board may provide the school district with monies to pay for the project management services in addition to the monies the school district receives pursuant to A.R.S. § 15-2041 provided:
  - 1. The school district demonstrates that the monies it receives pursuant to A.R.S. § 15-2041 are not sufficient to build a school that meets the building adequacy guidelines and pay the fees for the project management; and
  - 2. The school district demonstrates in writing to the Board's satisfaction that the school district does not

have the experience or resources necessary to successfully complete the new school construction project.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 6. CONTINGENCY FUNDS**

**R76601. Allocation and Use of Contingency Monies**

- A.** A sum equal to a percentage of the construction bid shall be set aside as a contingency fund to cover the cost of unknown conditions that could arise during construction. The School Facilities Board shall set aside an amount equal to five percent of the base cost for new construction and ten percent of the base cost for renovation of a structure or system replacement to cover these potential costs. Contingency funds are not part of the construction budget and are to be used only if needed. For deficiency corrections projects, any contingency funds which are not used shall be returned to the deficiency corrections fund. For projects funded by the new school facilities fund, any contingency funds which are not used may be used by the school district in accordance with A.R.S. § 15-2041.
- B.** The mechanism that is used to spend contingency funds during construction is a “change order.” There are three types of situations that generally require a change order:
1. An unknown condition that was not determined until after construction was started and that requires a change, deletion or addition to the construction contract.
  2. The school district has determined to change the scope of work and add to or delete from the contract.
  3. A change is required to correct a discrepancy between what the contractor bid and what the architect and owner intended. This type of change order could be determined an “error or omission” on the part of the architect. If so, the owner should pursue the architect’s error and omissions insurance to recover the costs of the required change.
- C.** Change orders can be additive or subtractive to the construction contract and both should be used. All changes in the scope of the contract and the contract documents should be considered potential change orders. Change order should not be used to correct conditions known prior to or discovered during the bid process. These should be addendum items and made part of the bid.
- D.** The following conditions apply to the use of all contingency monies allocated to a specific project approved by the School Facilities Board. If the district wishes to issue change orders that do not comply with these rules, the associated costs shall be accounted for separately and not considered part of the approved project. In other words, they would need to be paid out of separate monies and would not be considered part of the approved project, even though they might be included in the same basic contract. These costs would be paid for using local funds.
1. The school district may use contingency monies only to cover change orders that are to correct unknown conditions.
  2. Contingency funds may not be used to cover change orders for the other two types of situations discussed in subsection (B) above: the district has determined to change the scope of work during construction by adding components, or a change is required to correct a discrepancy created by the architect that could be considered an error or omission by the architect.
  3. For deficiency correction projects performed pursuant to A.R.S. § 15-2021 only, the Executive Director shall have the discretion to authorize the use of contingency funds for expansion of scope, to accommodate low budget estimates, and for all other project related costs.
  4. Contingency monies shall not be used to pay for “bid add alternates.” These items are not part of the final approved project.
- E.** A school district whose deficiency correction projects are combined with the deficiency correction projects of one or more additional school districts pursuant to R7-6-401 shall have the contingency amount included as a percentage of the overall set of projects that have been grouped together for such purposes. The Executive Director shall have the discretion to use, transfer, and/or combine the contingency amounts for any projects within such a group to any other project within the group of projects. The Executive Director’s adjustment authority pursuant to R7-6-401 shall be considered as a percentage or sum of the overall group of projects.
- F.** The Board may modify or waive the requirements of this Section for good cause.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**ARTICLE 7. MINIMUM SCHOOL FACILITY GUIDELINES FOR THE ARIZONA STATE SCHOOLS FOR THE DEAF AND BLIND**

**R76701. Application**

The provisions of this Article are applicable only to the Arizona State Schools for the Deaf and Blind (“ASDB”) as created by A.R.S. Title 15, Chapter 11. Board funding for deficiency correction projects pursuant to this Article is subject to legislative authorization for such funding.

**Historical Note**

Adopted by exempt rulemaking at 6 A.A.R. 917, effective April 30, 1999, filed in the Office of the Secretary of State January 13, 2000 (Supp. 00-1). Section repealed; new Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76705. School Site**

- A.** A school site shall have safe access, parking, drainage, security, and area to accommodate a school

facility that complies with the minimum gross square footage requirements established in A.R.S. § 52011, for the number of students at the school facility and that comply with these guidelines.

- B. "Safe access" means a student drop off area or pedestrian pathway that allows students to enter the school facility without crossing vehicular traffic or by using a designated crosswalk. Any student drop off area that is used by a bus must be configured to accommodate bus width and turning requirements.
- C. "Parking means a maintainable all weather surfaced area that is large enough to accommodate one parking space per staff FTE and 10 visitor parking spaces per 100 students. If this definition is not met, the sufficiency of the parking at the site is subject to review by the Board using the following criteria:
  - 1. Availability of street parking around the school;
  - 2. Availability of any nearby parking lots;
  - 3. Availability of public transit;
  - 4. Number of staff that drive to work on a daily basis; and
  - 5. The average number of visitors on a daily basis.
- D. "Drainage" means that a school site is configured such that runoff does not undermine the structural integrity of the school buildings located on the site or create flooding, ponding, or erosion resulting in a threat to health, safety, or welfare.
- E. "Security" means perimeter fencing surrounding the campus with lockable access gates with at least one automatic gate including card access as well as sight/audio, two-way communication with a central security office. The campus shall also have an accessible security office of at least 300 square feet per campus for visitor registration and multiple campus surveillance cameras strategically located around campus feeding video to the security office via monitors. The campus shall also have a fenced or walled play/physical education area for students in programs for preschool children with disabilities and kindergarten and students in grades 1 through 6. The requirement for a fenced or walled play/physical education area is met if the entire school is fenced or walled; otherwise, the sufficiency of this requirement is subject to review by the Board using the following criteria:
  - 1. Amount of vehicular traffic near the school site;
  - 2. Existence of hazardous or natural barriers on or near the school site;
  - 3. The amount of animal nuisance near the school site; and
  - 4. Visibility of the play/physical education area.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76710. Academic Classroom Space**

- A. The ASDB shall have school facilities with cumulative classroom square footage of 150 square feet for each of its students in programs for preschool children with disabilities and kindergarten programs.
- B. The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades kindergarten through six.
- C. The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades seven and eight.
- D. The ASDB shall have school facilities with cumulative classroom square footage of 100 square feet for each of its students in grades 9 through 12.
- E. For purposes of measuring cumulative classroom square footage for programs for preschool children with disabilities, kindergarten programs and grades one through six, classroom spaces are those occupied throughout the school day by the same students, or usable for general classroom purposes.
- F. For purposes of measuring cumulative classroom square footage for grades seven and eight, classroom spaces are 90 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- G. For purposes of measuring cumulative classroom square footage for grades 9 through 12, classroom spaces are 85 percent of the square footage of those rooms usable for general and specialty classroom purposes.
- H. Classroom space is measured from interior wall to interior wall.
- I. The amount of classroom space per student specified in this Article accounts for required teaching space.
- J. The square footage of a general classroom is not counted as specialty classroom square footage.
- K. The square footage of a specialty classroom is not counted as general classroom square footage.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76711. Classroom Fixtures and Equipment**

- A. Each general and specialty classroom shall contain two work surfaces per student and seating for each student in the classroom that accommodates the special needs of deaf, blind and multi-handicapped students. The work surface and seat shall be appropriate for the normal activity of the class conducted in the room. A work surface and seat are adequate if the items are:
  - 1. Safe; and
  - 2. Maintainable.
- B. Each general and specialty classroom shall have an erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction and a display surface. A single surface may meet one or more of these purposes. An erasable surface and a surface suitable for projection purposes, appropriate for group classroom instruction must be at least three feet by five feet.
- C. Each general and specialty classroom shall have storage for classroom materials or access to conveniently located storage.
- D. Each general and specialty classroom shall have a work surface and seat for the teacher and for the aid assigned to the classroom and secure storage for student records, that is located in the classroom or is convenient to access from the classroom.
- E. Each classroom shall have the following equipment to facilitate instruction to deaf/hard of hearing students:

1. TTY
  2. Accessible computer with Internet access and printer
  3. Television with built-in captioned and videocassette recorder.
  4. Loop systems for auditory access.
  5. Sound field amplification system.
  6. Overhead projector.
- F.** Each classroom shall have the following equipment to facilitate instruction to blind/visually impaired students:
1. One CCTV.
  2. One listening station.
  3. Two Braille n' Speaks.
  4. Two Braille writers.
  5. Slantboards.
  6. Fully accessible computer station with Braille printer.
  7. Tables to accommodate Braille writers and Braille books simultaneously.
  8. Shelving for Braille materials, low vision aids/equipment.
  9. Auditory electronic dictionaries and calculators.
  10. Cane racks.
  11. Television monitor with a video cassette recorder.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76712. Classroom Lighting**

- A.** Each general, science, and art classroom shall have non-glare, natural light and a light system capable of maintaining at least 50 footcandles of ambient, indirect light and 70 footcandles of direct task lighting, which may include lamps.
- B.** The light level shall be measured at a work surface located in the approximate center of the classroom, between clean light fixtures under normal operating conditions.
- C.** A random sample of 10 percent of the general, science, and art classrooms in each building shall be measured to determine the classroom light level for the school facility.
- D.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76713. Classroom Temperature**

- A.** Each general, science, and art classroom, and all student resident space shall have a HVAC system capable of maintaining a temperature between 68° and 82° F under normal conditions with an occupied classroom.
- B.** Except in areas where the elevation is above 5,000 feet, defective or non-operable A/C conditioning and evaporative coolers shall be replaced with A/C. Non-air conditioned schools with elevations less than 5,000 feet shall be air-conditioned.
- C.** In the classrooms, the temperature shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- D.** A random sample of 10 percent of the student residence space, and the general, science, and art classrooms in each building shall be measured to determine the classroom temperature level for the school facility.
- E.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76714. Classroom Acoustics**

- A.** The library/media center, the multipurpose room, and each general, science, and art classroom shall be maintainable at a sustained background sound level of less than 35 decibels.
- B.** The sound level shall be measured at a work surface in the approximate center of the room, under normal conditions.
- C.** A random sample of 10 percent of all rooms in each building subject to this requirement shall be measured to determine the room sound level for the school facility.
- D.** For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76715. Classroom Air Quality**

- A.** Each general, science, and art classroom shall have a HVAC system capable of maintaining a CO2 level of not more than 800 PPM above the ambient CO2 level.
- B.** The air quality shall be measured at a work surface in the approximate center of the classroom, under normal conditions.
- C.** A random sample of 10 percent of the general, science, and art classrooms in each building shall be

measured to determine the classroom air quality level for the school facility.

- D. For purposes of this Section, all portable or modular buildings located at a school facility that were manufactured in the same year and installed at the school facility at the same time are considered a single building.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76716. Education Classroom Facilities for Disabled Students**

A school facility shall have space or access to space capable of being used for the education programs of disabled students attending the school facility.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76720. Libraries and Media Centers/Research Area**

- A. A school facility shall have space for students to access research materials, literature, nontext reading materials, and reading books and technology, to permit students to achieve state academic standards as prescribed by the State Board of Education. This shall include space for reading, listening, and viewing materials.
- B. For an elementary school facility that serves at least 150 students, this space shall be the greater of 1000 square feet or the square footage equal to 325 square feet per student for 10 percent of the student body.
- C. For a middle or junior high or high school facility that serves at least 150 students, this space shall be the greater of 1200 square feet or the square footage equal to 275 square feet per student for 10 percent of the student body.
- D. A school facility that serves at least 150 students shall have library fixtures and equipment in accordance with R7-6-721 as modified from time to time.
- E. A school facility shall have library materials in accordance with R7-6-721 as modified from time to time.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-721. Equipment for Libraries and Media Centers/Research Area**

- A. The standard equipment list for libraries and media centers/research areas is as follows:
1. Twelve linear feet of library book shelves per blind student and two linear feet of library book shelves per deaf student;
  2. One work surface for every 40 students;
  3. One seat for every eight students;
  4. Two TV's/VCR's;
  5. One overhead projector;
  6. One accessible computer station with Internet access for every 25 students;
  7. One Braille printer;
  8. Ten books per students;
  9. One almanac (may be electronic or hard copy);
  10. One encyclopedia set per 200 students (may be electronic or hard copy);
  11. One atlas (may be electronic or hard copy);
  12. One unabridged dictionary (may be electronic or hard copy); and
  13. At least one set of each of the books listed in subsections (9) through (12) of this Section shall be accessible to blind students.
- B. Each almanac, encyclopedia and atlas shall have a publication date of 2000 or later.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76725. Cafeterias**

A school facility shall have a covered area or space, or combination, to permit students to eat within the school site, outside of general classrooms. This space may have more than one function and may fulfill more than one guideline requirement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76726. Food Service**

- A. A school facility shall have space and fixtures and equipment, in accordance with the standard equipment list in R7-6-727 as modified from time to time, for the preparation, receipt, storage, and service of food to students that is accessible to the serving area. The space, fixtures, and equipment shall be appropriate for the food service program of the school facility. Food service fixtures and equipment are subject to assessment under R76765(A)(1) and (2).
- B. Food service facilities and equipment shall comply with county health codes.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-727. Equipment List for Food Service.**

- A. A school facility shall have the following fixtures and equipment for the preparation, receipt, storage and service of food to students:
1. One three-compartment sink.
  2. One double stack convection oven for a cooking kitchen or a warming oven.

3. One dishwasher if reusable dishes and silverware are used.
  4. One hot food holding appliance.
  5. One range with hood.
  6. One refrigerator.
  7. One freezer.
  8. One milk refrigerator.
- B.** The items in subsection (A) of this Section may be substituted for a reasonable alternative.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76730. Auditoriums, Multipurpose Rooms, or Other Multiuse Space**

A school facility shall have a space capable of being used for student assembly sufficient to accommodate one-half of the student body plus parents and staff, which shall be the same size or larger than an average classroom at the facility. The space must be equal to at least 50 square feet multiplied by one-third of the student body. This space may have more than one function and may fulfill more than one guideline requirement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76735. Technology**

- A.** Each classroom at a school facility shall have Internet access, at least through a network modem. Each school must have available either on a school basis or on a district-wide basis a firewall and filtering software. Each school facility shall have at least one network multimedia computer, available for student use, for every eight students, on a school wide network. Computer equipment is subject to assessment under R76765(A)(1) and (2).
- B.** A multimedia computer is defined as a computer that has sound, CD-ROM, a keyboard, a monitor, and a pointing device.
- C.** Until June 30, 2005, each ASDB campus shall have an application service provider, coupled with an adequate variety of instructional software.
- D.** When five or more students are provided instruction remotely, at least one classroom in each school facility shall be equipped for distance learning activities, including video conferencing capable of supporting 30 frames per second.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76740. Transportation**

- A.** Pupil transportation vehicles manufactured prior to 1978 shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.
- B.** Diesel powered pupil transportation vehicles with more than 250,000 miles or more than 10 years of service, gasoline powered pupil transportation vehicles with more than 150,000 miles or more than 10 years of service, and coach buses with more than 500,000 miles or more than 15 years of service, shall be replaced if the eligible students transported exceeds the student transportation capacity of the district, excluding the vehicle eligible for replacement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76745. Science Facilities**

- A.** A school facility with students in grades 5 through 12 shall have classroom space to deliver practical science instruction, or classroom space for an alternate science delivery method.
1. For grades five through eight no space is required beyond the academic classroom requirement. For grades 9 through 12, 10 square feet per student of practical and instructional science space is required. The space shall not be smaller than the average classroom at the facility. This space is separate and distinct from the academic classroom requirement and may not be used for other instruction.
- B.** A school facility with students in grades 5 through 12 that delivers practical science instruction shall have science fixtures and equipment, in accordance with R7-6-746 as modified from time to time. If an alternate science delivery method is used by the ASDB, a school facility shall have science fixtures and equipment for students in grades 5 through 12 that are an alternate equivalent to the science fixtures and equipment identified in R7-6-746.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-746. Equipment List for Science Facilities**

- A.** Science facilities for students in grades 9 through 12 shall have the following fixtures and equipment:
1. One demonstration table with non-corrosive surface per 250 students.
  2. Six laboratory stations with a non-corrosive surface per 250 students.
  3. One fume hood.
  4. One chemical storage unit per 1,000 students.
  5. One eye wash/shower per 250 students.
  6. One dissecting microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
  7. One refrigerator.
- B.** Science facilities for students in grades 5 through 12 shall have the following fixtures and equipment:
1. One sink per 250 students.

2. One compound microscope per 25 students, minimum of the lesser of 12 or one-half of the number of eligible students.
3. One balance per 250 students.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76747. Arts Facilities**

- A. A school facility with students in grades 7 through 12 shall have space to deliver art education programs including visual, music, and performing arts programs or have access to an alternate delivery method.
- B. For grades 7 through 12, ten square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76748. Vocational Education Facilities**

- A. A school facility with students in grades 7 through 12 shall have space to deliver vocational education programs or have access to an alternate delivery method.
- B. For grades 7 through 12, forty square feet per student of art and/or vocational education space is required. The space shall not be smaller than the average classroom at the facility. This space shall not be included in the academic classroom requirement and may not be used for other instruction.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76749. Physical Education and Comprehensive Health Program Facilities**

- A. A school facility shall have area and space and fixtures, in accordance with R7-6-750 as modified from time to time, for physical education activity and space for a comprehensive health program established in compliance with the academic standards prescribed by the State Board of Education.
- B. One hundred twenty-five square feet per student of comprehensive health space is required. The comprehensive health space is the indoor space available for physical education and this space shall not be included in the academic classroom requirement and this space shall not have more than one function or satisfy more than one guideline requirement.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-750. Equipment List for Physical Education**

- A. A school facility shall have the following equipment and fixtures for physical education:
  1. Exterior to the building, one basketball court size surface area and two goals per 300 students, four court maximum.
  2. Exterior to the building, one baseball/softball backstop.
- B. Concrete shall be used when installing basketball courts.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76751. Alternate Delivery Method**

If an alternate delivery method is used by the ASDB to deliver instruction in art, science, or vocational education, the alternate method must be approved by the ASDB governing board and be capable of meeting the requirements established in the academic standards prescribed by the State Board of Education for the specific subject area.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76755. Parent Work Space**

- A. If parents are invited to assist with school activities, a school facility shall include a work space capable of being used by parents.
- B. One square foot per student, with a minimum of 150 square feet and a maximum of 800 square feet, is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76756. Two-way Internal Communication System**

A school facility shall have a network and twoway internal communication system between a central location and each classroom, library, physical education space, and the cafeteria. The communication system shall have both audio and video capabilities.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76757. Fire Alarm**

A school facility shall have a fire alarm system as required by the State Fire Marshal. The fire alarm system shall meet current ADAAG requirements.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76758. Administrative Space**

- A.** A school facility shall have space for the use of the administration of the school. For the school administrator, 150 designated square feet is required. For general administrative purposes and additional 7.5 square feet per student is required, with a minimum of 150 square feet and a maximum of 2,500 square feet. The maximum may be exceeded.
- B.** A school facility shall have space to isolate a sick student from the other students. This space shall be a designated space that is accessible to a restroom, large enough to accommodate one cot per 50 students, with a maximum of eight cots. The maximum may be exceeded.
- C.** A school facility shall have work space available to the faculty. This space is in addition to any work area available to a teacher, in or near a classroom. One square foot per student with a maximum of 150 square feet and a maximum of 800 square feet is required. The maximum may be exceeded. The space may be divided into more than one room. This space may have more than one function.
- D.** A 9,500 square foot facility used for the administration of the Arizona School for the Deaf and Blind shall also be available.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76760. Laws and Building Codes**

- A.** To the extent required by law, school buildings shall be in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building.
- B.** At a minimum, the 1997 Uniform Building Code (UBC) is required to be met for new school facility construction and, as required, for building renovations in existing schools.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R7-6-761. Energy Saving Measures**

New school facility construction and, as required, building renovations in existing schools, shall include, where reasonable, energy conservation upgrades that will provide dollar savings in excess of the cost of the upgrade within eight years of the installation.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76765. Building Systems**

- A.** Building systems in a school facility must be in working order and capable of being properly maintained. A building system shall be considered to be in "working order and capable of being maintained," if all of the following:
1. The system is capable of being operated as intended and maintained.
  2. Newly manufactured or refurbished replacement parts are available.
  3. The remaining life expectancy of the system, at the time of the initial statewide assessment, is at least three years.
  4. The system is capable of supporting the gross square footage standard and minimum school facility guidelines established in this Article.
  5. Components of the system present no imminent danger of personal injury.
- B.** Building systems include, as required by law, roof, plumbing, telephone, electrical, and heating and cooling systems as well as fire alarm, two-way internal communication, computer cabling, and existing security systems.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76770. Building Structural Soundness**

A school facility must be structurally sound. A school facility shall be considered structurally sound if the building presents no imminent danger or major visible signs of decay or distress, and the remaining life expectancy of the building structure appears to be at least a minimum of three years.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

**R76771. Exterior Envelope, Interior Surfaces and Interior Finishes**

The exterior envelope, interior surfaces, and interior finishes at school facilities must be safe and capable of being maintained.

1. An exterior envelope is safe and capable of being maintained if:
  - a. Walls and roof are weather tight under normal conditions with routine upkeep;
  - b. Doors and windows are weather tight under normal conditions with routine upkeep; and
  - c. The building structural systems support the loads imposed on them.
2. An interior surface is safe and capable of being maintained if it is:
  - a. Structurally sound;
  - b. Capable of supporting a finish; and
  - c. Capable of continuing in its intended use with normal maintenance and repair for at least three years after the initial statewide assessment.
3. An interior finish is safe and capable of being maintained if it is:
  - a. Free of exposed lead paint;
  - b. Free of friable asbestos; and
  - c. Capable of continuing in its intended use, with normal maintenance and repair, for at least three years after the initial statewide assessment.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76775. Minimum Gross Square Footage**

The ASDB shall have sufficient school facilities, which comply with minimum school facility guidelines established in this Article, to meet the per pupil minimum adequate gross square footage requirements for the ASDB as determined by law, based on number and grade distribution of the students served by the ASDB.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76776. Assessment of Minimum Gross Square Footage**

- A. Computation of the gross square footage of a school facility may be by physical measure or by calculation based on architectural plan documents.
- B. The gross square footage of a school facility equals all space within the facility excluding space used for ASDB administrative purposes.
- C. The gross square footage of the ASDB shall equal the sum of the gross square footage of each school facility owned by the ASDB.
- D. The minimum gross square footage of the ASDB equals the sum of the products of the students in each grade or program for preschool children with disabilities or kindergarten program multiplied by the minimum adequate gross square footage requirements per pupil, applicable to the ASDB for such grade or program.
- E. For the purpose of assessment of minimum gross square footage, the number of children in all grades and kindergarten shall be evenly distributed across all grades and kindergarten served by the ASDB.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-780. Student Boarding Space**

Each ASDB campus shall provide safe and sanitary student boarding for resident ASDB students as follows:

1. A student dormitory consisting of a living area, resident kitchen, and bedroom for each student in grades preschool through 12 at a ratio of 400 square feet per student.
2. A bedroom for each Resource housing at a ratio of 150 square feet per occupant,
3. One live-in assistant housing (apartment) for every eight resident students at a ratio of 500 square feet per live-in assistant.
4. One laundry room for every student dormitory at a ratio of 100 square feet for every eight resident students.
5. All independent living dormitory space shall be constructed with 300 square feet per student with no fewer than two students per dormitory.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-781. ASDB Program Requirement Facilities**

- A. Each ASDB campus shall provide minimum facilities required to support ASDB audiology program requirements at a ratio of five square feet per deaf student and one square foot per blind student.
- B. Each ASDB campus shall provide minimum facilities required to support ASDB auditory training and speech therapy program requirements at a ratio of three square feet per deaf student and one square foot per blind student.
- C. Each ASDB campus shall provide minimum facilities required to support ASDB low vision program requirements at a ratio of three square feet per student.
- D. Each ASDB campus shall provide minimum facilities required to support ASDB occupational and physical therapy program requirements at a ratio of five square feet per student with a minimum of 1,500 square feet.
- E. Each ASDB campus shall provide minimum facilities required to support ASDB orientation and mobility program requirements at a ratio of six square feet per blind student.
- F. Each ASDB campus shall provide a distance learning classroom required to support ASDB program requirements. This facility shall be at a minimum a 600 square foot separate/dedicated space for teaching to satellite, remote, and shared schools.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-782. Student Health Center**

Each ASDB boarding campus shall have space for a student health center at a ratio of 13 square feet per student.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R7-6-783. Parent Outreach Program**

Each ASDB campus shall have space for a Parent Outreach Program at a ratio of 10 square feet per family with students enrolled at the campus with a minimum area of 300 square feet.

#### **Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

#### **R76790. Guidelines Exception**

The Board may grant an exception from any of the guidelines requirements, upon agreement between the Board and the school district. The Board shall grant an exception if it determines that the intent of the guideline is capable of being met by the ASDB in an alternate manner. If the Board grants the exception, the ASDB shall be deemed to

meet the guideline and is not eligible for state funding to meet the guideline.

**Historical Note**

New Section made by exempt rulemaking at 8 A.A.R. 287, effective June 7, 2001 (Supp. 01-4).

### 15-2001. School facilities board; conflict of interest

A. The school facilities board is established consisting of the following members who shall be appointed by the governor pursuant to section 38-211 in such a manner as to provide for approximate geographic balance and approximate balance between public and private members:

1. One member who is an elected member of a school district governing board with knowledge and experience in the area of finance.
2. One private citizen who represents an organization of taxpayers.
3. One member with knowledge and experience in school construction.
4. One member who is a registered professional architect and who has current knowledge and experience in school architecture.
5. One member with knowledge and experience in school facilities management in a public school system.
6. One member with knowledge and experience in demographics.
7. One member who is a teacher and who currently provides classroom instruction.
8. One member who is a registered professional engineer and who has current knowledge and experience in school engineering.
9. One member who is an owner or officer of a private business.

B. In addition to the members appointed pursuant to subsection A of this section, the superintendent of public instruction or the superintendent's designee shall serve as an advisory nonvoting member of the school facilities board.

C. The governor shall appoint a chairperson from members appointed pursuant to subsection A of this section.

D. Members of the school facilities board serve four year terms. The school facilities board shall meet as often as the members deem necessary. A majority of the members constitutes a quorum for the transaction of business.

E. The unexcused absence of a member for more than three consecutive meetings is justification for removal by a majority vote of the board. If the member is removed, notice shall be given of the removal pursuant to section 38-292.

F. The governor shall fill a vacancy by appointment of a qualified person as provided in subsection A of this section.

G. Members of the board who are employed by government entities are not eligible to receive compensation. Members of the board who are not employed by government entities are entitled to payment of one hundred fifty dollars for each meeting attended, prorated for partial days spent for each meeting, up to two thousand five hundred dollars each year. All members are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2. These expenses and the payment of compensation are payable to a member from monies appropriated to the board from the new school facilities fund.

H. Members of the school facilities board are subject to title 38, chapter 3, article 8.

### 15-2002. Powers and duties; executive director; staffing; report

A. The school facilities board shall:

1. Make assessments of school facilities and equipment deficiencies and approve the distribution of grants as appropriate.
2. Maintain a database of school facilities to administer the building renewal grant fund and new school facilities formula. The facilities listed in the database must include all buildings that are owned by school districts. The school facilities board shall ensure that the database is updated on at least an annual basis. Each school district shall report to the school facilities board no later than September 1 of each year information as required by the school facilities board for the administration of the building renewal grant fund and computation of new school facilities formula distributions, including the nature and cost of major repairs, renovations or physical improvements to or replacement of building systems or equipment that were made in the previous year and that were paid for either with local monies or monies provided by the school facilities board from the building renewal grant fund. Each school district shall report any

school or school buildings that have been closed, that have been leased to another entity or that operate as a charter school. The school facilities board may review or audit the information, or both, to confirm the information submitted by a school district. Notwithstanding any other provision of this chapter, if a school district converts space that is listed in the database maintained pursuant to this paragraph to space that will be used for administrative purposes, the school district is responsible for any costs associated with the conversion, maintenance and replacement of that space. If a building is significantly upgraded or remodeled, the school facilities board shall adjust the age of that school facility in the database as follows:

(a) Determine the building capacity value as follows:

(i) Multiply the student capacity of the building by the per pupil square foot capacity established by section 15-2041.

(ii) Multiply the product determined in item (i) of this subdivision by the cost per square foot established by section 15-2041.

(b) Divide the cost of the renovation by the building capacity value determined in subdivision (a) of this paragraph.

(c) Multiply the quotient determined in subdivision (b) of this paragraph by the currently listed age of the building in the database.

(d) Subtract the product determined in subdivision (c) of this paragraph from the currently listed age of the building in the database, rounded to the nearest whole number. If the result is a negative number, use zero.

3. Inspect school buildings at least once every five years to ensure compliance with the building adequacy standards prescribed in section 15-2011 and routine preventative maintenance guidelines as prescribed in this section with respect to construction of new buildings and maintenance of existing buildings. The school facilities board shall randomly select twenty school districts every thirty months and inspect them pursuant to this paragraph.

4. Review and approve student population projections submitted by school districts to determine to what extent school districts are entitled to monies to construct new facilities pursuant to section 15-2041. The board shall make a final determination within five months after the receipt of an application by a school district for monies from the new school facilities fund.

5. Certify that plans for new school facilities meet the building adequacy standards prescribed in section 15-2011.

6. Develop prototypical elementary and high school designs. The board shall review the design differences between the schools with the highest academic productivity scores and the schools with the lowest academic productivity scores. The board shall also review the results of a valid and reliable survey of parent quality rating in the highest performing schools and the lowest performing schools in this state. The survey of parent quality rating shall be administered by the department of education. The board shall consider the design elements of the schools with the highest academic productivity scores and parent quality ratings in the development of elementary and high school designs. The board shall develop separate school designs for elementary, middle and high schools with varying pupil capacities.

7. Develop application forms, reporting forms and procedures to carry out the requirements of this article.

8. Review and approve or reject requests submitted by school districts to take actions pursuant to section 15-341, subsection G.

9. Submit electronically an annual report on or before December 15 to the speaker of the house of representatives, the president of the senate, the superintendent of public instruction, the secretary of state and the governor that includes the following information:

(a) A detailed description of the amount of monies distributed by the school facilities board in the previous fiscal year.

(b) A list of each capital project that received monies from the school facilities board during the previous fiscal year, a brief description of each project that was funded and a summary of the board's reasons for the distribution of monies for the project.

(c) A summary of the findings and conclusions of the building maintenance inspections conducted pursuant to this article during the previous fiscal year.

(d) A summary of the findings of common design elements and characteristics of the highest performing schools and the lowest performing schools based on academic productivity, including the results of the parent quality rating survey. For the purposes of this subdivision, "academic productivity" means academic year advancement per calendar year as measured with student-level data using the statewide nationally standardized norm-referenced achievement test.

10. On or before December 1 of each year, report electronically to the joint committee on capital review the amounts necessary to fulfill the requirements of sections 15-2022 and 15-2041 for the following three fiscal years. In developing the amounts necessary for this report, the school facilities board shall use the most recent average daily membership data available. On request from the board, the department of education shall make available the most recent average daily membership data for use in calculating the amounts necessary to fulfill the requirements of section 15-2041 for the following three fiscal years. The board shall provide copies of the report to the president of the senate, the speaker of the house of representatives and the governor.

11. Adopt minimum school facility adequacy guidelines to provide the minimum quality and quantity of school buildings and the facilities and equipment necessary and appropriate to enable pupils to achieve the educational goals of the Arizona state schools for the deaf and the blind. The school facilities board shall establish minimum school facility adequacy guidelines applicable to the Arizona state schools for the deaf and the blind.

12. In each even-numbered year, report electronically to the joint committee on capital review the amounts necessary to fulfill the requirements of section 15-2041 for the Arizona state schools for the deaf and the blind for the following two fiscal years. The Arizona state schools for the deaf and the blind shall incorporate the findings of the report in any request for new school facilities monies. Any monies provided to the Arizona state schools for the deaf and the blind for new school facilities are subject to legislative appropriation.

13. On or before June 15 of each year, submit electronically detailed information regarding demographic assumptions, a proposed construction schedule and new school construction cost estimates for individual projects approved in the current fiscal year and expected project approvals for the upcoming fiscal year to the joint committee on capital review for its review. A copy of the report shall also be submitted electronically to the governor's office of strategic planning and budgeting. The joint legislative budget committee staff, the governor's office of strategic planning and budgeting staff and the school facilities board staff shall agree on the format of the report.

14. Every two years, provide school districts with information on improving and maintaining the indoor environmental quality in school buildings.

15. On or before December 31 of each year, report to the joint legislative budget committee on all class B bond approvals by school districts in that year. Each school district shall report to the school facilities board on or before December 1 of each year information required by the school facilities board for the report prescribed in this paragraph.

16. Validate proposed adjacent ways projects submitted by school districts as prescribed in section 15-995.

B. The school facilities board may contract for the following services in compliance with the procurement practices prescribed in title 41, chapter 23:

1. Private services.
2. Construction project management services.
3. Assessments for school buildings to determine if the buildings have outlived their useful life pursuant to section 15-2041, subsection G.
4. Services related to land acquisition and development of a school site.

C. The governor shall appoint an executive director of the school facilities board pursuant to section 38-211. The executive director is eligible to receive compensation as determined pursuant to section 38-611 and may hire and fire necessary staff subject to title 41, chapter 4, article 4 and as approved by the legislature in the budget. The executive director shall have demonstrated competency in school finance, facilities design or facilities management, either in private business or government service. The executive

director serves at the pleasure of the governor. The staff of the school facilities board is exempt from title 41, chapter 4, articles 5 and 6. The executive director:

1. Shall analyze applications for monies submitted to the board by school districts.
  2. Shall assist the board in developing forms and procedures for the distribution and review of applications and the distribution of monies to school districts.
  3. May review or audit, or both, the expenditure of monies by a school district for deficiencies corrections and new school facilities.
  4. Shall assist the board in the preparation of the board's annual report.
  5. Shall research and provide reports on issues of general interest to the board.
  6. May aid school districts in the development of reasonable and cost-effective school designs in order to avoid statewide duplicated efforts and unwarranted expenditures in the area of school design.
  7. May assist school districts in facilitating the development of multijurisdictional facilities.
  8. Shall assist the board in any other appropriate matter or method as directed by the members of the board.
  9. Shall establish procedures to ensure compliance with the notice and hearing requirements prescribed in section 15-905. The notice and hearing procedures adopted by the board shall include the requirement, with respect to the board's consideration of any application filed after July 1, 2001 or after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility, that the military airport receive notification of the application by first class mail at least thirty days before any hearing concerning the application.
  10. May expedite any request for monies in which the local match was not obtained for a project that received preliminary approval by the state board for school capital facilities.
  11. Shall expedite any request for monies in which the school district governing board submits an application that shows an immediate need for a new school facility.
  12. Shall make a determination as to administrative completion within one month after the receipt of an application by a school district for monies from the new school facilities fund.
  13. Shall provide technical support to school districts as requested by school districts in connection with the construction of new school facilities and the maintenance of existing school facilities and may contract directly with construction project managers pursuant to subsection B of this section. This paragraph does not restrict a school district from contracting with a construction project manager using district or state resources.
- D. When appropriate, the school facilities board shall review and use the statewide school facilities inventory and needs assessment conducted by the joint committee on capital review and issued in July, 1995.
- E. The school facilities board shall contract with one or more private building inspectors to complete an initial assessment of school facilities and equipment and shall inspect each school building in this state at least once every five years to ensure compliance with section 15-2011. A copy of the inspection report, together with any recommendations for building maintenance, shall be provided to the school facilities board and the governing board of the school district.
- F. The school facilities board may consider appropriate combinations of facilities or uses in making assessments of and curing deficiencies pursuant to subsection A, paragraph 1 of this section and in certifying plans for new school facilities pursuant to subsection A, paragraph 5 of this section.
- G. The board shall not award any monies to fund new facilities that are financed by class A bonds that are issued by the school district.
- H. The board shall not distribute monies to a school district for replacement or repair of facilities if the costs associated with the replacement or repair are covered by insurance or a performance or payment bond.
- I. The board may contract for construction services and materials that are necessary to correct existing deficiencies in school district facilities. The board may procure the construction services necessary

pursuant to this subsection by any method, including construction-manager-at-risk, design-build, design-bid-build or job-order-contracting as provided by title 41, chapter 23. The construction planning and services performed pursuant to this subsection are exempt from section 41-791.01.

J. The school facilities board may enter into agreements with school districts to allow school facilities board staff and contractors access to school property for the purposes of performing the construction services necessary pursuant to subsection I of this section.

K. Each school district shall develop routine preventative maintenance guidelines for its facilities. The guidelines shall include plumbing systems, electrical systems, heating, ventilation and air conditioning systems, special equipment and other systems and for roofing systems shall recommend visual inspections performed by district staff for signs of structural stress and weakness. The guidelines shall be submitted to the school facilities board for review and approval. If on inspection by the school facilities board it is determined that a school district facility was inadequately maintained pursuant to the school district's routine preventative maintenance guidelines, the school district shall return the building to compliance with the school district's routine preventative maintenance guidelines.

L. The school facilities board may temporarily transfer monies between the capital reserve fund established by section 15-2003, the emergency deficiencies correction fund established by section 15-2022 and the new school facilities fund established by section 15-2041 if all of the following conditions are met:

1. The transfer is necessary to avoid a temporary shortfall in the fund into which the monies are transferred.
2. The transferred monies are restored to the fund where the monies originated as soon as practicable after the temporary shortfall in the other fund has been addressed.
3. The school facilities board reports to the joint committee on capital review the amount of and the reason for any monies transferred.

M. After notifying each school district, and if a written objection from the school district is not received by the school facilities board within thirty days of the notification, the school facilities board may access public utility company records of power, water, natural gas, telephone and broadband usage to assemble consistent and accurate data on utility consumption at school facilities to determine the effectiveness of facility design, operation and maintenance measures intended to reduce energy and water consumption and costs. Any public utility that provides service to a school district in this state shall provide the data requested by the school facilities board pursuant to this subsection.

N. The school facilities board shall not require a common school district that provides instruction to pupils in grade nine to obtain approval from the school facilities board to reconfigure its school facilities. A common school district that provides instruction to pupils in grade nine is not entitled to additional monies from the school facilities board for facilities to educate pupils in grade nine.

### 15-2011. Minimum school facility adequacy requirements; definition

(L17, Ch. 258, sec. 11 & Ch. 320, sec. 5)

A. The school facilities board, as determined and prescribed in this chapter, shall provide funding to school districts for new construction as the number of pupils in the district fills the existing school facilities and requires more pupil space.

B. School buildings in a school district are adequate if all of the following requirements are met:

1. The buildings contain sufficient and appropriate space and equipment that comply with the minimum school facility adequacy guidelines established pursuant to subsection F of this section. The state shall not fund facilities for elective courses that require the school district facilities to exceed minimum school facility adequacy requirements. The school facilities board shall determine whether a school building meets the requirements of this paragraph by analyzing the total square footage that is available for each pupil in conjunction with the need for specialized spaces and equipment.

2. The buildings are in compliance with federal, state and local building and fire codes and laws that are applicable to the particular building, except that a school with an aggregate area of less than five thousand square feet is subject to permitting and inspection by a local fire marshal and is only subject to regulation or inspection by the office of the state fire marshal if the county, city or town in which the school is located does not employ a local fire marshal. An existing school building is not required to comply with current requirements for new buildings unless this compliance is specifically mandated by law or by the building or fire code of the jurisdiction where the building is located.

3. The building systems, including roofs, plumbing, telephone systems, electrical systems, heating systems and cooling systems, are in working order and are capable of being properly maintained.

4. The buildings are structurally sound.

C. The standards that shall be used by the school facilities board to determine whether a school building meets the minimum adequate gross square footage requirements are as follows:

1. For a school district that provides instruction to pupils in programs for preschool children with disabilities, kindergarten programs and grades one through six, eighty square feet per pupil in programs for preschool children with disabilities, kindergarten programs and grades one through six.

2. For a school district that provides instruction to up to eight hundred pupils in grades seven and eight, eighty-four square feet per pupil in grades seven and eight.

3. For a school district that provides instruction to more than eight hundred pupils in grades seven and eight, eighty square feet per pupil in grades seven and eight or sixty-seven thousand two hundred square feet, whichever is more.

4. For a school district that provides instruction to up to four hundred pupils in grades nine through twelve, one hundred twenty-five square feet per pupil in grades nine through twelve.

5. For a school district that provides instruction to more than four hundred and up to one thousand pupils in grades nine through twelve, one hundred twenty square feet per pupil in grades nine through twelve or fifty thousand square feet, whichever is more.

6. For a school district that provides instruction to more than one thousand and up to one thousand eight hundred pupils in grades nine through twelve, one hundred twelve square feet per pupil in grades nine through twelve or one hundred twenty thousand square feet, whichever is more.

7. For a school district that provides instruction to more than one thousand eight hundred pupils in grades nine through twelve, ninety-four square feet per pupil in grades nine through twelve or two hundred one thousand six hundred square feet, whichever is more.

D. The school facilities board may modify the square footage requirements prescribed in subsection C of this section or modify the amount of monies awarded to cure the square footage deficiency pursuant to this section for particular school districts based on extraordinary circumstances for any of the following considerations:

1. The number of pupils served by the school district.

2. Geographic factors.

3. Grade configurations other than those prescribed in subsection C of this section.

E. In measuring the square footage per pupil requirements of subsection C of this section, the school facilities board shall:

1. Use the average daily membership through the first one hundred days in session.

2. For each school, use the lesser of either:

(a) Total gross square footage.

(b) Student capacity multiplied by the appropriate square footage per pupil prescribed by subsection C of this section.

3. Consider the total space available in all schools in use in the school district, except that the school facilities board shall allow an exclusion of the square footage for certain schools and the pupils within the schools' boundaries if the school district demonstrates to the board's satisfaction unusual or excessive busing of pupils or unusual attendance boundary changes between schools.

4. Compute the gross square footage of all buildings by measuring from exterior wall to exterior wall. Square footage used solely for district administration, storage of vehicles and other nonacademic purposes shall be excluded from the net square footage.
  5. Include all portable and modular buildings.
  6. Include in the net square footage new construction funded wholly or partially by the school facilities board based on the square footage funded by the school facilities board. If the new construction is to exceed the square footage funded by the school facilities board, the excess square footage shall not be included in the net square footage if any of the following applies:
    - (a) The excess square footage was constructed before July 1, 2002 or funded by a class B bond, impact aid revenue bond or capital outlay override approved by the voters after August 1, 1998 and before June 30, 2002 or funded from unrestricted capital outlay expended before June 30, 2002.
    - (b) The excess square footage of new school facilities does not exceed twenty-five percent of the minimum square footage requirements pursuant to subsection C of this section.
    - (c) The excess square footage of expansions to school facilities does not exceed twenty-five percent of the minimum square footage requirements pursuant to subsection C of this section.
  7. Exclude square footage built under a developer agreement according to section 15-342, paragraph 33 until the school facilities board provides funding for the square footage under section 15-2041, subsection O.
  8. Include square footage that a school district has leased to another entity.
- F. The school facilities board shall adopt rules establishing minimum school facility adequacy guidelines. The guidelines shall provide the minimum quality and quantity of school buildings and facilities and equipment necessary and appropriate to enable pupils to achieve the academic standards pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01. At a minimum, the school facilities board shall address all of the following in developing these guidelines:
1. School sites.
  2. Classrooms.
  3. Libraries and media centers, or both.
  4. Cafeterias.
  5. Auditoriums, multipurpose rooms or other multiuse space.
  6. Technology.
  7. Transportation.
  8. Facilities for science, arts and physical education.
  9. Other facilities and equipment that are necessary and appropriate to achieve the academic standards prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.
  10. Appropriate combinations of facilities or uses listed in this section.
- G. The board shall consider the facilities and equipment of the schools with the highest academic productivity scores, as prescribed in section 15-2002, subsection A, paragraph 9, subdivision (d), and the highest parent quality ratings in the establishment of the guidelines.
- H. The school facilities board may consider appropriate combinations of facilities or uses in making assessments of and curing existing deficiencies pursuant to section 15-2002, subsection A, paragraph 1 and in certifying plans for new school facilities pursuant to section 15-2002, subsection A, paragraph 5.
- I. For the purposes of this section, "student capacity" means the capacity adjusted to include any additions to or deletions of space, including modular or portable buildings at the school. The school facilities board shall determine the student capacity for each school in conjunction with each school district, recognizing each school's allocation of space as of July 1, 1998, to achieve the academic standards prescribed pursuant to section 15-203, subsection A, paragraphs 12 and 13 and sections 15-701 and 15-701.01.

#### 15-2022. Emergency deficiencies correction fund; definition

A. An emergency deficiencies correction fund is established consisting of monies transferred from the new school facilities fund established by section 15-2041. The school facilities board shall administer the

fund and distribute monies in accordance with the rules of the school facilities board to school districts for emergency purposes. The school facilities board shall not transfer monies from the new school facilities fund if the transfer will affect, interfere with, disrupt or reduce any capital projects that the school facilities board has approved pursuant to section 15-2041. The school facilities board shall transfer to the emergency deficiencies correction fund the amount necessary each fiscal year to fulfill the requirements of this section. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. If the school facilities board determines that there are insufficient monies in the emergency deficiencies correction fund to correct an emergency, the school district may correct the emergency pursuant to section 15-907.

C. If a school district has an emergency, the school district shall apply to the school facilities board for funding for the emergency. The school district's application shall disclose any insurance or building renewal monies available to the school district to pay for the emergency.

D. The school facilities board staff shall acknowledge receipt of the school district's application for emergency deficiencies funding in writing within five business days of receiving the application. The school facilities board staff shall include in the written acknowledgement of receipt to the school district any investigative, study or informational requirements from the school district, along with an estimated timeline to complete the requirements, necessary for the school facilities board staff to make a recommendation for funding to the school facilities board.

E. For the purposes of this section, "emergency" means a serious need for materials, services or construction or expenses in excess of the district's adopted budget for the current fiscal year that seriously threatens the functioning of the school district, the preservation or protection of property or public health, welfare or safety.

#### 15-2032. School facilities board building renewal grant fund; definitions

A. The building renewal grant fund is established consisting of monies appropriated to the fund by the legislature. The school facilities board shall administer the fund and distribute monies to school districts for the purpose of maintaining the adequacy of existing school facilities. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

B. The school facilities board shall distribute monies from the fund based on grant requests from school districts to fund primary building renewal projects. Project requests shall be prioritized by the school facilities board, with priority given to school districts that have provided routine preventative maintenance on the facility, and to school districts that can provide a match of monies provided by the fund. The school facilities board shall approve only projects that will be completed within twelve months, unless similar projects on average take longer to complete.

C. School districts that receive monies from the fund shall use these monies on projects for buildings or any part of a building in the school facilities board's database for any of the following:

1. Major renovations and repairs to a building.
2. Upgrading systems and areas that will maintain or extend the useful life of the building.
3. Infrastructure costs.

D. Monies received from the fund shall not be used for any of the following purposes:

1. New construction.
2. Remodeling interior space for aesthetic or preferential reasons.
3. Exterior beautification.
4. Demolition.
5. Routine preventative maintenance.
6. Any project in a building, or part of a building, that is being leased to another entity.

E. Accommodation schools are not eligible for monies from the building renewal grant fund.

F. If the school facilities board or a court of competent jurisdiction determines that a school district received monies from the building renewal grant fund that must be reimbursed to the school facilities board due to legal action associated with improper construction by a hired contractor, the school district

shall reimburse the school facilities board an agreed-on amount for deposit into the building renewal grant fund.

G. For the purposes of this section:

1. "Primary building renewal projects" means projects that are necessary for buildings owned by school districts that are required to meet the minimum adequacy standards for student capacity and that fall below the minimum school facility adequacy guidelines, as adopted by the school facilities board pursuant to section 15-2011, for school districts that have provided routine preventative maintenance to the school facility.
2. "Routine preventative maintenance" means services that are performed on a regular schedule at intervals ranging from four times a year to once every three years, or on the schedule of services recommended by the manufacturer of the specific building system or equipment, and that are intended to extend the useful life of a building system and reduce the need for major repairs.
3. "Student capacity" has the same meaning prescribed in section 15-2011.

**15-2041. New school facilities fund; capital plan; report**

A. The new school facilities fund is established consisting of monies appropriated by the legislature and monies credited to the fund pursuant to section 37-221. The school facilities board shall administer the fund and distribute monies, as a continuing appropriation, to school districts for the purpose of constructing new school facilities and for contracted expenses pursuant to section 15-2002, subsection B, paragraphs 2, 3 and 4. On June 30 of each fiscal year, any unobligated contract monies in the new school facilities fund shall be transferred to the capital reserve fund established by section 15-2003.

B. The school facilities board shall prescribe a uniform format for use by the school district governing board in developing and annually updating a capital plan that consists of each of the following:

1. Enrollment projections for the next five years for elementary schools and eight years for middle and high schools, including a description of the methods used to make the projections.
2. A description of new schools or additions to existing schools needed to meet the building adequacy standards prescribed in section 15-2011. The description shall include:
  - (a) The grade levels and the total number of pupils that the school or addition is intended to serve.
  - (b) The year in which it is necessary for the school or addition to begin operations.
  - (c) A timeline that shows the planning and construction process for the school or addition.
3. Long-term projections of the need for land for new schools.
4. Any other necessary information required by the school facilities board to evaluate a school district's capital plan.
5. If a school district pays tuition for all or a portion of the school district's high school pupils to another school district, the capital plan shall indicate the number of pupils for which the district pays tuition to another district. If a school district accepts pupils from another school district pursuant to section 15-824, subsection A, the school district shall indicate the projections for this population separately. This paragraph does not apply to a small isolated school district as defined in section 15-901.

C. If the capital plan indicates a need for a new school or an addition to an existing school within the next four years or a need for land within the next ten years, the school district shall submit its plan to the school facilities board by July 1 and shall request monies from the new school facilities fund for the new construction or land. The school facilities board may require a school district to sell land that was previously purchased entirely with monies provided by the school facilities board if the school facilities board determines that the property is no longer needed within the ten-year period specified in this subsection for a new school or no longer needed within that ten-year period for an addition to an existing school. Monies provided for land shall be in addition to any monies provided pursuant to subsection D of this section.

D. The school facilities board shall distribute monies from the new school facilities fund for additional square footage as follows:

1. The school facilities board shall review and evaluate the enrollment projections. On or before December 1, following the submission of the enrollment projections, the school facilities board shall

either approve the projections as submitted or revise the projections. In approving or revising the enrollment projections, the school facilities board shall use the most recent fortieth day average daily membership data available during the current school year. On request from the school facilities board, the department of education shall make available the most recent average daily membership data for use in revising the enrollment projections. In determining new construction requirements, the school facilities board shall determine the net new growth of pupils that will require additional square footage that exceeds the building adequacy standards prescribed in section 15-2011. If the projected growth and the existing number of pupils exceed three hundred fifty pupils who are served in a school district other than the pupil's resident school district, the school facilities board, the receiving school district and the resident school district shall develop a capital facilities plan on how to best serve those pupils. A small isolated school district as defined in section 15-901 is not required to develop a capital facilities plan pursuant to this paragraph.

2. If the most recent fortieth day average daily membership during the current school year indicates that additional space would not have been needed during the current school year in order to meet the building adequacy standards prescribed in section 15-2011, the request shall be held for consideration by the school facilities board for possible future funding and the school district shall annually submit an updated plan until the additional space is needed.

3. If the most recent fortieth day average daily membership during the current school year indicates that additional space would have been needed during the current school year in order to meet the building adequacy standards prescribed in section 15-2011, the school facilities board shall provide an amount as follows:

(a) Determine the number of pupils requiring additional square footage to meet building adequacy standards. This amount for elementary schools shall not be less than the number of new pupils for whom space will be needed in the next year and shall not exceed the number of new pupils for whom space will be needed in the next five years. This amount for middle and high schools shall not be less than the number of new pupils for whom space will be needed in the next four years and shall not exceed the number of new pupils for whom space will be needed in the next eight years.

(b) Multiply the number of pupils determined in subdivision (a) of this paragraph by the square footage per pupil. The square footage per pupil is ninety square feet per pupil for preschool children with disabilities, kindergarten programs and grades one through six, one hundred square feet for grades seven and eight, one hundred thirty-four square feet for a school district that provides instruction in grades nine through twelve for fewer than one thousand eight hundred pupils and one hundred twenty-five square feet for a school district that provides instruction in grades nine through twelve for at least one thousand eight hundred pupils. The total number of pupils in grades nine through twelve in the district shall determine the square footage factor to use for net new pupils. The school facilities board may modify the square footage requirements prescribed in this subdivision for particular schools based on any of the following factors:

(i) The number of pupils served or projected to be served by the school district.

(ii) Geographic factors.

(iii) Grade configurations other than those prescribed in this subdivision.

(iv) Compliance with minimum school facility adequacy requirements established pursuant to section 15-2011.

(c) Multiply the product obtained in subdivision (b) of this paragraph by the cost per square foot. The cost per square foot is ninety dollars for preschool children with disabilities, kindergarten programs and grades one through six, ninety-five dollars for grades seven and eight and one hundred ten dollars for grades nine through twelve. The cost per square foot shall be adjusted annually for construction market considerations based on an index identified or developed by the joint legislative budget committee as necessary but not less than once each year. The school facilities board shall multiply the cost per square foot by 1.05 for any school district located in a rural area. The school facilities board may only modify the base cost per square foot prescribed in this subdivision for particular schools based on geographic conditions or site conditions. For the purposes of this subdivision, "rural area" means an area outside a

thirty-five-mile radius of a boundary of a municipality with a population of more than fifty thousand persons.

(d) Once the school district governing board obtains approval from the school facilities board for new facility construction monies, additional portable or modular square footage created for the express purpose of providing temporary space for pupils until the completion of the new facility and any additional space funded by the school district shall not be included by the school facilities board for the purpose of new construction funding calculations. On completion of the new facility construction project, any additional space funded by the school district shall be included as prescribed by this chapter and, if the portable or modular facilities continue in use, the portable or modular facilities shall be included as prescribed by this chapter, unless the school facilities board approves their continued use for the purpose of providing temporary space for pupils until the completion of the next new facility that has been approved for funding from the new school facilities fund.

4. For projects approved after December 31, 2001, and notwithstanding paragraph 3 of this subsection, a unified school district that does not have a high school is not eligible to receive high school space as prescribed by section 15-2011 and this section unless the unified district qualifies for geographic factors prescribed by paragraph 3, subdivision (b), item (ii) of this subsection.

5. If a joint technical education district leases a building from a school district, that building shall be included in the school district's square footage calculation for the purposes of new construction pursuant to this section.

6. If a school district leases a building to another entity, that building shall be included in the school district's square footage calculation for purposes of new construction pursuant to this section.

7. A school district shall qualify for monies from the new school facilities fund for additional square footage in a fiscal year only if the school facilities board has approved or revised its enrollment projection under paragraph 3 of this subsection on or before March 1 of the prior fiscal year.

E. Monies for architectural and engineering fees, project management services and preconstruction services shall be distributed on the completion of the analysis by the school facilities board of the school district's request. After receiving monies pursuant to this subsection, the school district shall submit a design development plan for the school or addition to the school facilities board before any monies for construction are distributed. If the school district's request meets the building adequacy standards, the school facilities board may review and comment on the district's plan with respect to the efficiency and effectiveness of the plan in meeting state square footage and facility standards before distributing the remainder of the monies. If the school facilities board modifies the cost per square foot as prescribed in subsection D, paragraph 3, subdivision (c) of this section, the school facilities board may deduct the cost of project management services and preconstruction services from the required cost per square foot. The school facilities board may decline to fund the project if the square footage is no longer required due to revised enrollment projections.

F. The school facilities board shall distribute the monies needed for land for new schools so that land may be purchased at a price that is less than or equal to fair market value and in advance of the construction of the new school. If necessary, the school facilities board may distribute monies for land to be leased for new schools if the duration of the lease exceeds the life expectancy of the school facility by at least fifty percent. A school district shall not use land purchased or partially purchased with monies provided by the school facilities board for a purpose other than a site for a school facility without obtaining prior written approval from the school facilities board. A school district shall not lease, sell or take any action that would diminish the value of land purchased or partially purchased with monies provided by the school facilities board without obtaining prior written approval from the school facilities board. The proceeds derived through the sale of any land purchased or partially purchased, or the sale of buildings funded or partially funded, with monies provided by the school facilities board shall be returned to the state fund from which it was appropriated and to any other participating entity on a proportional basis. Except as provided in section 15-342, paragraph 33, if a school district acquires real property by donation at an appropriate school site approved by the school facilities board, the school facilities board shall distribute an amount equal to twenty percent of the fair market value of the donated real property that can be used

for academic purposes. The school district shall place the monies in the unrestricted capital outlay fund and increase the unrestricted capital budget limit by the amount of monies placed in the fund. Monies distributed under this subsection shall be distributed from the new school facilities fund. A school district that receives monies from the new school facilities fund for a donation of land pursuant to section 15-342, paragraph 33 shall not receive monies from the school facilities board for the donation of real property pursuant to this subsection. A school district shall not pay a consultant a percentage of the value of any of the following:

1. Donations of real property, services or cash from any of the following:

(a) Entities that have offered to provide construction services to the school district.

(b) Entities that have been contracted to provide construction services to the school district.

(c) Entities that build residential units in that school district.

(d) Entities that develop land for residential use in that school district.

2. Monies received from the school facilities board on behalf of the school district.

3. Monies paid by the school facilities board on behalf of the school district.

G. In addition to distributions to school districts based on pupil growth projections, a school district may submit an application to the school facilities board for monies from the new school facilities fund if one or more school buildings have outlived their useful life. If the school facilities board determines that the school district needs to build a new school building for these reasons, the school facilities board shall remove the square footage computations that represent the building from the computation of the school district's total square footage for purposes of this section. If the square footage recomputation reflects that the school district no longer meets building adequacy standards, the school district qualifies for a distribution of monies from the new school construction formula in an amount determined pursuant to subsection D of this section. The school facilities board may only modify the base cost per square foot prescribed in this subsection under extraordinary circumstances for geographic factors or site conditions.

H. School districts that receive monies from the new school facilities fund shall establish a district new school facilities fund and shall use the monies in the district new school facilities fund only for the purposes prescribed in this section. By October 15 of each year, each school district shall report to the school facilities board the projects funded at each school in the previous fiscal year with monies from the district new school facilities fund and shall provide an accounting of the monies remaining in the new school facilities fund at the end of the previous fiscal year.

I. If a school district has surplus monies received from the new school facilities fund, the school district may use the surplus monies only for capital purposes for the project for up to one year after completion of the project. If the school district possesses surplus monies from the new school construction project that have not been expended within one year of the completion of the project, the school district shall return the surplus monies to the school facilities board for deposit in the new school facilities fund.

J. The board's consideration of any application filed after December 31 of the year in which the property becomes territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 for monies to fund the construction of new school facilities proposed to be located in territory in the vicinity of a military airport or ancillary military facility shall include, if after notice is transmitted to the military airport pursuant to section 15-2002 and before the public hearing the military airport provides comments and an analysis concerning compatibility of the proposed school facilities with the high noise or accident potential generated by military airport or ancillary military facility operations that may have an adverse effect on public health and safety, consideration and analysis of the comments and analysis provided by the military airport before making a final determination.

K. If a school district uses its own project manager for new school construction, the members of the school district governing board and the project manager shall sign an affidavit stating that the members and the project manager understand and will follow the minimum adequacy requirements prescribed in section 15-2011.

L. The school facilities board shall establish a separate account in the new school facilities fund designated as the litigation account to pay attorney fees, expert witness fees and other costs associated with litigation in which the school facilities board pursues the recovery of damages for deficiencies

correction that resulted from alleged construction defects or design defects that the school facilities board believes caused or contributed to a failure of the school building to conform to the building adequacy requirements prescribed in section 15-2011. Attorney fees paid pursuant to this subsection shall not exceed the market rate for similar types of litigation. On or before December 1 of each year, the school facilities board shall report to the joint committee on capital review the costs associated with current and potential litigation that may be paid from the litigation account.

M. Until the state board of education and the auditor general adopt rules pursuant to section 15-213, subsection I, the school facilities board may allow school districts to contract for construction services and materials through the qualified select bidders list method of project delivery for new school facilities pursuant to this section.

N. The school facilities board shall submit electronically a report on project management services and preconstruction services to the governor, the president of the senate and the speaker of the house of representatives by December 31 of each year. The report shall compare projects that use project management and preconstruction services with those that do not. The report shall address cost, schedule and other measurable components of a construction project. School districts, construction manager at risk firms and project management firms that participate in a school facilities board funded project shall provide the information required by the school facilities board in relation to this report.

O. If a school district constructs new square footage according to section 15-342, paragraph 33, the school facilities board shall review the design plans and location of any new school facility submitted by school districts and another party to determine whether the design plans comply with the adequacy standards prescribed in section 15-2011 and the square footage per pupil requirements pursuant to subsection D, paragraph 3, subdivision (b) of this section. When the school district qualifies for a distribution of monies from the new school facilities fund according to this section, the school facilities board shall distribute monies to the school district from the new school facilities fund for the square footage constructed under section 15-342, paragraph 33 at the same cost per square foot established by this section that was in effect at the time of the beginning of the construction of the school facility. Before the school facilities board distributes any monies pursuant to this subsection, the school district shall demonstrate to the school facilities board that the facilities to be funded pursuant to this section meet the minimum adequacy standards prescribed in section 15-2011. The agreement entered into pursuant to section 15-342, paragraph 33 shall set forth the procedures for the allocation of these funds to the parties that participated in the agreement.

P. Accommodation schools are not eligible for monies from the new school facilities fund.

Q. If the school facilities board approves a school district for funding from the new school facilities fund and the full legislative appropriation is not available to the school district in the fiscal year following the approval by the school facilities board, the school district may use any legally available monies to pay for the land or the new construction project approved by the school facilities board and may reimburse the fund from which the monies were used in subsequent years with legislative appropriations when those appropriations are made available by this state.

### 15-901. Definitions

A. In this title, unless the context otherwise requires:

1. "Average daily membership" means the total enrollment of fractional students and full-time students, minus withdrawals, of each school day through the first one hundred days or two hundred days in session, as applicable, for the current year. Withdrawals include students who are formally withdrawn from schools and students who are absent for ten consecutive school days, except for excused absences identified by the department of education. For the purposes of this section, school districts and charter schools shall report student absence data to the

department of education at least once every sixty days in session. For computation purposes, the effective date of withdrawal shall be retroactive to the last day of actual attendance of the student or excused absence.

(a) "Fractional student" means:

(i) For common schools, a preschool child who is enrolled in a program for preschool children with disabilities of at least three hundred sixty minutes each week that meets at least two hundred sixteen hours over the minimum number of days or a kindergarten student who is at least five years of age before January 1 of the school year and enrolled in a school kindergarten program that meets at least three hundred fifty-six hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. Lunch periods and recess periods may not be included as part of the instructional hours unless the child's individualized education program requires instruction during those periods and the specific reasons for such instruction are fully documented. In computing the average daily membership, preschool children with disabilities and kindergarten students shall be counted as one-half of a full-time student. For common schools, a part-time student is a student enrolled for less than the total time for a full-time student as defined in this section. A part-time common school student shall be counted as one-fourth, one-half or three-fourths of a full-time student if the student is enrolled in an instructional program that is at least one-fourth, one-half or three-fourths of the time a full-time student is enrolled as defined in subdivision (b) of this paragraph.

(ii) For high schools, a part-time student who is enrolled in less than four subjects that count toward graduation as defined by the state board of education, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, in a recognized high school. The average daily membership of a part-time high school student shall be 0.75 if the student is enrolled in an instructional program of three subjects that meet at least five hundred forty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. The average daily membership of a part-time high school student shall be 0.5 if the student is enrolled in an instructional program of two subjects that meet at least three hundred sixty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. The average daily membership of a part-time high school student shall be 0.25 if the student is enrolled in an instructional program of one subject that meets at least one hundred eighty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. The hours in which a student is scheduled to attend a high school during the regular school day shall be included in the calculation of the average daily membership for that student.

(b) "Full-time student" means:

(i) For common schools, a student who is at least six years of age before January 1 of a school year, who has not graduated from the highest grade taught in the school district and who is regularly enrolled in a course of study required by the state board of education. First, second and third grade students or ungraded group B children with disabilities who are at least five, but under six, years of age by September 1 must be enrolled in an instructional program that meets for a total of at least seven hundred twelve hours for a one hundred eighty-day school year, or the

instructional hours prescribed in this section. Fourth, fifth and sixth grade students must be enrolled in an instructional program that meets for a total of at least eight hundred ninety hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section. Seventh and eighth grade students must be enrolled in an instructional program that meets for at least one thousand hours. Lunch periods and recess periods may not be included as part of the instructional hours unless the student is a child with a disability and the child's individualized education program requires instruction during those periods and the specific reasons for such instruction are fully documented.

(ii) For high schools, a student who has not graduated from the highest grade taught in the school district and who is enrolled in at least an instructional program of four or more subjects that count toward graduation as defined by the state board of education, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, that meets for a total of at least seven hundred twenty hours for a one hundred eighty-day school year, or the instructional hours prescribed in this section in a recognized high school. A full-time student shall not be counted more than once for computation of average daily membership. The average daily membership of a full-time high school student shall be 1.0 if the student is enrolled in at least four subjects that meet at least seven hundred twenty hours for a one hundred eighty-day school year, or the equivalent instructional hours prescribed in this section. The hours in which a student is scheduled to attend a high school during the regular school day shall be included in the calculation of the average daily membership for that student.

(iii) If a child who has not reached five years of age before September 1 of the current school year is admitted to kindergarten and repeats kindergarten in the following school year, a school district or charter school is not eligible to receive basic state aid on behalf of that child during the child's second year of kindergarten. If a child who has not reached five years of age before September 1 of the current school year is admitted to kindergarten but does not remain enrolled, a school district or charter school may receive a portion of basic state aid on behalf of that child in the subsequent year. A school district or charter school may charge tuition for any child who is ineligible for basic state aid pursuant to this item.

(iv) Except as otherwise provided by law, for a full-time high school student who is concurrently enrolled in two school districts or two charter schools, the average daily membership shall not exceed 1.0.

(v) Except as otherwise provided by law, for any student who is concurrently enrolled in a school district and a charter school, the average daily membership shall be apportioned between the school district and the charter school and shall not exceed 1.0. The apportionment shall be based on the percentage of total time that the student is enrolled in or in attendance at the school district and the charter school.

(vi) Except as otherwise provided by law, for any student who is concurrently enrolled, pursuant to section 15-808, in a school district and Arizona online instruction or a charter school and Arizona online instruction, the average daily membership shall be apportioned between the school district and Arizona online instruction or the charter school and Arizona online instruction

and shall not exceed 1.0. The apportionment shall be based on the percentage of total time that the student is enrolled in or in attendance at the school district and Arizona online instruction or the charter school and Arizona online instruction.

(vii) For homebound or hospitalized, a student receiving at least four hours of instruction per week.

(c) "Regular school day" means the regularly scheduled class periods intended for instructional purposes. Instructional purposes may include core subjects, elective subjects, lunch, study halls, music instruction, and other classes that advance the academic instruction of pupils, except that instructional purposes shall not include athletic practices or extracurricular clubs and activities.

2. "Budget year" means the fiscal year for which the school district is budgeting and that immediately follows the current year.

3. "Common school district" means a political subdivision of this state offering instruction to students in programs for preschool children with disabilities and kindergarten programs and either:

(a) Grades one through eight.

(b) Grades one through nine pursuant to section 15-447.01.

4. "Current year" means the fiscal year in which a school district is operating.

5. "Daily attendance" means:

(a) For common schools, days in which a pupil:

(i) Of a kindergarten program or ungraded, but not group B children with disabilities, who is at least five, but under six, years of age by September 1 attends at least three-quarters of the instructional time scheduled for the day. If the total instruction time scheduled for the year is at least three hundred fifty-six hours but is less than seven hundred twelve hours, such attendance shall be counted as one-half day of attendance. If the instructional time scheduled for the year is at least six hundred ninety-two hours, "daily attendance" means days in which a pupil attends at least one-half of the instructional time scheduled for the day. Such attendance shall be counted as one-half day of attendance.

(ii) Of the first, second or third grades attends more than three-quarters of the instructional time scheduled for the day.

(iii) Of the fourth, fifth or sixth grades attends more than three-quarters of the instructional time scheduled for the day, except as provided in section 15-797.

(iv) Of the seventh or eighth grades attends more than three-quarters of the instructional time scheduled for the day, except as provided in section 15-797.

(b) For common schools, the attendance of a pupil at three-quarters or less of the instructional time scheduled for the day shall be counted as follows, except as provided in section 15-797 and except that attendance for a fractional student shall not exceed the pupil's fractional membership:

(i) If attendance for all pupils in the school is based on quarter days, the attendance of a pupil shall be counted as one-fourth of a day's attendance for each one-fourth of full-time instructional time attended.

(ii) If attendance for all pupils in the school is based on half days, the attendance of at least three-quarters of the instructional time scheduled for the day shall be counted as a full day's attendance and attendance at a minimum of one-half but less than three-quarters of the instructional time scheduled for the day equals one-half day of attendance.

(c) For common schools, the attendance of a preschool child with disabilities shall be counted as one-fourth day's attendance for each thirty-six minutes of attendance not including lunch periods and recess periods, except as provided in paragraph 1, subdivision (a), item (i) of this subsection for children with disabilities up to a maximum of three hundred sixty minutes each week.

(d) For high schools, the attendance of a pupil shall not be counted as a full day unless the pupil is actually and physically in attendance and enrolled in and carrying four subjects, each of which, if taught each school day for the minimum number of days required in a school year, would meet a minimum of one hundred twenty-three hours a year, or the equivalent, that count toward graduation in a recognized high school except as provided in section 15-797 and subdivision (e) of this paragraph. Attendance of a pupil carrying less than the load prescribed shall be prorated.

(e) For high schools, the attendance of a pupil may be counted as one-fourth of a day's attendance for each sixty minutes of instructional time in a subject that counts toward graduation, except that attendance for a pupil shall not exceed the pupil's full or fractional membership.

(f) For homebound or hospitalized, a full day of attendance may be counted for each day during a week in which the student receives at least four hours of instruction.

(g) For school districts that maintain school for an approved year-round school year operation, attendance shall be based on a computation, as prescribed by the superintendent of public instruction, of the one hundred eighty days' equivalency or two hundred days' equivalency, as applicable, of instructional time as approved by the superintendent of public instruction during which each pupil is enrolled.

6. "Daily route mileage" means the sum of:

(a) The total number of miles driven daily by all buses of a school district while transporting eligible students from their residence to the school of attendance and from the school of attendance to their residence on scheduled routes approved by the superintendent of public instruction.

(b) The total number of miles driven daily on routes approved by the superintendent of public instruction for which a private party, a political subdivision or a common or a contract carrier is reimbursed for bringing an eligible student from the place of the student's residence to a school transportation pickup point or to the school of attendance and from the school transportation scheduled return point or from the school of attendance to the student's residence. Daily route mileage includes the total number of miles necessary to drive to transport eligible students from and to their residence as provided in this paragraph.

7. "District support level" means the base support level plus the transportation support level.

8. "Eligible students" means:

(a) Students who are transported by or for a school district and who qualify as full-time students or fractional students, except students for whom transportation is paid by another school district or a county school superintendent, and:

(i) For common school students, whose place of actual residence within the school district is more than one mile from the school facility of attendance or students who are admitted pursuant to section 15-816.01 and who meet the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free or reduced price lunches and whose actual place of residence outside the school district boundaries is more than one mile from the school facility of attendance.

(ii) For high school students, whose place of actual residence within the school district is more than one and one-half miles from the school facility of attendance or students who are admitted pursuant to section 15-816.01 and who meet the economic eligibility requirements established under the national school lunch and child nutrition acts (42 United States Code sections 1751 through 1785) for free or reduced price lunches and whose actual place of residence outside the school district boundaries is more than one and one-half miles from the school facility of attendance.

(b) Kindergarten students, for purposes of computing the number of eligible students under subdivision (a), item (i) of this paragraph, shall be counted as full-time students, notwithstanding any other provision of law.

(c) Children with disabilities, as defined by section 15-761, who are transported by or for the school district or who are admitted pursuant to chapter 8, article 1.1 of this title and who qualify as full-time students or fractional students regardless of location or residence within the school district or children with disabilities whose transportation is required by the pupil's individualized education program.

(d) Students whose residence is outside the school district and who are transported within the school district on the same basis as students who reside in the school district.

9. "Enrolled" or "enrollment" means that a pupil is currently registered in the school district.

10. "GDP price deflator" means the average of the four implicit price deflators for the gross domestic product reported by the United States department of commerce for the four quarters of the calendar year.

11. "High school district" means a political subdivision of this state offering instruction to students for grades nine through twelve or that portion of the budget of a common school district that is allocated to teaching high school subjects with permission of the state board of education.

12. "Revenue control limit" means the base revenue control limit plus the transportation revenue control limit.

13. "Student count" means average daily membership as prescribed in this subsection for the fiscal year before the current year, except that for the purpose of budget preparation student count means average daily membership as prescribed in this subsection for the current year.

14. "Submit electronically" means submitted in a format and in a manner prescribed by the department of education.

15. "Total bus mileage" means the total number of miles driven by all buses of a school district during the school year.

16. "Total students transported" means all eligible students transported from their place of residence to a school transportation pickup point or to the school of attendance and from the school of attendance or from the school transportation scheduled return point to their place of residence.

17. "Unified school district" means a political subdivision of this state offering instruction to students in programs for preschool children with disabilities and kindergarten programs and grades one through twelve.

B. In this title, unless the context otherwise requires:

1. "Base" means the revenue level per student count specified by the legislature.

2. "Base level" means the following amounts plus the percentage increases to the base level as provided in sections 15-902.04 and 15-952, except that if a school district or charter school is eligible for an increase in the base level as provided in two or more of these sections, the base level amount shall be calculated by compounding rather than adding the sum of one plus the percentage of the increase from those different sections:

(a) For fiscal year 2007-2008, three thousand two hundred twenty-six dollars eighty-eight cents.

(b) For fiscal year 2008-2009, three thousand two hundred ninety-one dollars forty-two cents.

(c) For fiscal years 2009-2010, 2010-2011, 2011-2012 and 2012-2013, three thousand two hundred sixty-seven dollars seventy-two cents.

(d) For fiscal year 2013-2014, three thousand three hundred twenty-six dollars fifty-four cents.

(e) For fiscal year 2014-2015, three thousand three hundred seventy-three dollars eleven cents.

(f) For fiscal year 2015-2016, three thousand six hundred dollars zero cents.

(g) For fiscal year 2016-2017, three thousand six hundred thirty-five dollars sixty-four cents.

(h) For fiscal year 2017-2018, three thousand six hundred eighty-three dollars twenty-seven cents.

3. "Base revenue control limit" means the base revenue control limit computed as provided in section 15-944.

4. "Base support level" means the base support level as provided in section 15-943.

5. "Certified teacher" means a person who is certified as a teacher pursuant to the rules adopted by the state board of education, who renders direct and personal services to schoolchildren in the form of instruction related to the school district's educational course of study and who is paid from the maintenance and operation section of the budget.

6. "DD" means programs for children with developmental delays who are at least three years of age but under ten years of age. A preschool child who is categorized under this paragraph is not eligible to receive funding pursuant to section 15-943, paragraph 2, subdivision (b).

7. "ED, MIID, SLD, SLI and OHI" means programs for children with emotional disabilities, mild intellectual disabilities, a specific learning disability, a speech/language impairment and other health impairments. A preschool child who is categorized as SLI under this paragraph is not eligible to receive funding pursuant to section 15-943, paragraph 2, subdivision (b).

8. "ED-P" means programs for children with emotional disabilities who are enrolled in private special education programs as prescribed in section 15-765, subsection D, paragraph 1 or in an intensive school district program as provided in section 15-765, subsection D, paragraph 2.

9. "ELL" means English learners who do not speak English or whose native language is not English, who are not currently able to perform ordinary classroom work in English and who are enrolled in an English language education program pursuant to sections 15-751, 15-752 and 15-753.

10. "Full-time equivalent certified teacher" or "FTE certified teacher" means for a certified teacher the following:

(a) If employed full time as defined in section 15-501, 1.00.

(b) If employed less than full time, multiply 1.00 by the percentage of a full school day, or its equivalent, or a full class load, or its equivalent, for which the teacher is employed as determined by the governing board.

11. "Group A" means educational programs for career exploration, a specific learning disability, an emotional disability, a mild intellectual disability, remedial education, a speech/language impairment, developmental delay, homebound, bilingual, other health impairments and gifted pupils.

12. "Group B" means educational improvements for pupils in kindergarten programs and grades one through three, educational programs for autism, a hearing impairment, a moderate intellectual disability, multiple disabilities, multiple disabilities with severe sensory impairment, orthopedic impairments, preschool severe delay, a severe intellectual disability and emotional disabilities for school age pupils enrolled in private special education programs or in school district programs for children with severe disabilities or visual impairment and English learners enrolled in a program to promote English language proficiency pursuant to section 15-752.

13. "HI" means programs for pupils with hearing impairment.

14. "Homebound" or "hospitalized" means a pupil who is capable of profiting from academic instruction but is unable to attend school due to illness, disease, accident or other health conditions, who has been examined by a competent medical doctor and who is certified by that doctor as being unable to attend regular classes for a period of not less than three school months or a pupil who is capable of profiting from academic instruction but is unable to attend school regularly due to chronic or acute health problems, who has been examined by a competent medical doctor and who is certified by that doctor as being unable to attend regular classes for intermittent periods of time totaling three school months during a school year. The medical certification shall state the general medical condition, such as illness, disease or chronic health condition, that is the reason that the pupil is unable to attend school. Homebound or hospitalized includes a student who is unable to attend school for a period of less than three months due to a pregnancy if a competent medical doctor, after an examination, certifies that the student is unable to attend regular classes due to risk to the pregnancy or to the student's health.

15. "K-3" means kindergarten programs and grades one through three.

16. "K-3 reading" means reading programs for pupils in kindergarten programs and grades one, two and three.

17. "MD-R, A-R and SID-R" means resource programs for pupils with multiple disabilities, autism and severe intellectual disability.

18. "MD-SC, A-SC and SID-SC" means self-contained programs for pupils with multiple disabilities, autism and severe intellectual disability.

19. "MD-SSI" means a program for pupils with multiple disabilities with severe sensory impairment.

20. "MOID" means programs for pupils with moderate intellectual disability.
21. "OI-R" means a resource program for pupils with orthopedic impairments.
22. "OI-SC" means a self-contained program for pupils with orthopedic impairments.
23. "PSD" means preschool programs for children with disabilities as provided in section 15-771.
24. "P-SD" means programs for children who meet the definition of preschool severe delay as provided in section 15-771.
25. "Qualifying tax rate" means the qualifying tax rate specified in section 15-971 applied to the assessed valuation used for primary property taxes.
26. "Small isolated school district" means a school district that meets all of the following:
  - (a) Has a student count of fewer than six hundred in kindergarten programs and grades one through eight or grades nine through twelve.
  - (b) Contains no school that is fewer than thirty miles by the most reasonable route from another school, or, if road conditions and terrain make the driving slow or hazardous, fifteen miles from another school that teaches one or more of the same grades and is operated by another school district in this state.
  - (c) Is designated as a small isolated school district by the superintendent of public instruction.
27. "Small school district" means a school district that meets all of the following:
  - (a) Has a student count of fewer than six hundred in kindergarten programs and grades one through eight or grades nine through twelve.
  - (b) Contains at least one school that is fewer than thirty miles by the most reasonable route from another school that teaches one or more of the same grades and is operated by another school district in this state.
  - (c) Is designated as a small school district by the superintendent of public instruction.
28. "Transportation revenue control limit" means the transportation revenue control limit computed as prescribed in section 15-946.
29. "Transportation support level" means the support level for pupil transportation operating expenses as provided in section 15-945.
30. "VI" means programs for pupils with visual impairments.

**DEPARTMENT OF INSURANCE (O20-0801)**

Title 20, Chapter 6, Article 24, Out-Of-Network Claim Dispute Resolution



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

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**MEETING DATE:** August 4, 2020

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

**FROM:** Council Staff

**DATE:** July 14, 2020

**SUBJECT: DEPARTMENT OF INSURANCE (O20-0801)**  
Title 20, Chapter 6, Article 24, Out-Of-Network Claim Dispute Resolution

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### **Summary**

This One Year Review Report (1YRR) from the Department of Insurance (Department) relates to rules in Title 20, Chapter 6, Article 24, regarding Out-Of-Network Claim Dispute Resolution. These rules were adopted pursuant to a rulemaking exemption from the Administrative Procedure Act (APA) granted to the Department in Laws 2018, Ch. 272, § 7. The purpose of these rules is to implement the Out-of-Network Claim Dispute Resolution Act (A.R.S. §§ 20-3111 through 20-3119) (Laws 2017, Ch. 190 § 3, amended by Laws 2018, Ch. 272 § 7), which is meant to allow an enrollee of a health plan who receives a surprise out-of-network bill (surprise bill) and who disputes the amount of the bill a method of dispute resolution so long as certain criteria are met.

### **Proposed Action**

The Department does not propose to take any action on these rules.

1. **Has the agency analyzed whether the rules are authorized by statute?**

Yes. The Department cites both general and specific statutory authority for these rules. The session law authorizing an exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6 is Laws 2018, Ch. 272, § 7.

2. **Summary of the agency's economic impact comparison and identification of stakeholders:**

In 2017, the Legislature passed the Out-of-Network Claim Dispute Resolution Act and later amended it in 2018. The Act was an effort to allow an enrollee of a health plan who has received a surprise out-of-network bill ("surprise bill") and who disputes the amount of the bill to dispute resolution of the bill provided certain criteria are met. The economic impact to consumers was beneficial because it allowed them to dispute, at no cost to them, a surprise bill and only required them to pay what they are contractually required to pay under their insurance policy to the out-of-network provider. The balance of the surprise bill is negotiated between the provider and the health insurance company. Stakeholders are the Department, health insurers, health care providers, health care billing companies, patient advocates and the public.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The rules are procedural in nature and do not impose any additional cost to regulated persons not already imposed under the Out-of-Network Claim Resolution Dispute Act.

4. **Has the agency received any written criticisms of the rules since they were adopted?**

No. The Department has not received any written criticisms of the rules since they were adopted.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability, consistency with other rules and statutes, and effectiveness?**

Yes. The Department states that the rules are clear, concise, understandable, effective, and consistent with other rules and statutes.

6. **Has the agency analyzed the current enforcement status of the rules?**

Yes. The Department states that the rules are consistent with its current enforcement policy.

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

The Department states there is no corresponding federal law to these rules.

8. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules under review do not require a permit, license, or agency authorization.

9. **Conclusion**

Council staff finds that the rules reviewed are clear, concise, understandable, and effective. Council staff recommends approval of this report.



**Director's Office**  
**Arizona Department of Insurance**  
100 North 15<sup>th</sup> Avenue, Suite 261, Phoenix, AZ 85007-2624  
Phone: (602) 364-3100 | Web: <https://insurance.az.gov>

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**Douglas A. Ducey, Governor**  
**Christina Corieri, Interim Director**

June 10, 2020

VIA EMAIL: [grrc@azdoa.gov](mailto:grrc@azdoa.gov)  
Ms. Nicole Sornsin  
Governor's Regulatory Review Council  
100 North 15<sup>th</sup> Ave., Suite 305  
Phoenix, AZ 85007

**RE:** Arizona Department of Insurance  
Title 20, Chapter 6, Article 24  
One Year Review Report

Dear Chairperson Sornsin:

Please find enclosed the One Year Review Report of the Arizona Department of Insurance ("Department") for Title 20, Chapter 6, Article 24, which is due on July 2, 2020.

The Department hereby certifies compliance with A.R.S. § 41-1091.

Please contact Mary Kosinski at (602) 364-3476 or [mary.kosinski@difi.az.gov](mailto:mary.kosinski@difi.az.gov), or me at (602) 364-3764 or [scott.greenberg@difi.az.gov](mailto:scott.greenberg@difi.az.gov) if you have any questions.

Sincerely,

  
Scott Greenberg  
Deputy Director

**Arizona Department of Insurance**  
**1 YEAR REVIEW REPORT PURSUANT TO A.R.S. § 41-1095**  
**Title 20. Commerce, Financial Institutions, and Insurance**  
**Chapter 6. Department of Insurance**  
**Article 24. Out-Of-Network Claim Dispute Resolution**  
**June 10, 2020**

**1. Rules' Effectiveness in Achieving their Objectives.**

*Including a summary of any available data supporting the conclusions reached.*

Rule	Objective
R20-6-2401 Definitions	R20-6-2401 dovetails with the Out-of-Network Claim Dispute Resolution Act (A.R.S. §§ 20-3111 through 20-3119). This subsection works with A.R.S. § 20-3111 to define terms used in Article 24 to define terms for the Out-of-Network Claims Dispute Resolution process.
R20-6-2402 Request for Arbitration	R20-6-2402 provides the procedures, deadlines and location of forms for an enrollee to request an arbitration. The request for an arbitration begins the process of resolving the surprise out-of-network bill that a provider has sent to the enrollee. This Section achieves the objective of notifying an enrollee of the procedures required to be followed in order to initiate an arbitration and of outlining the Department's duties regarding the processing of enrollee requests.
R20-6-2403 Informal Settlement Teleconference	R20-6-2403 requires the Department to arrange and notify the parties of an informal settlement teleconference (IST). It also notifies the insurer of its responsibilities and the consequences of non-participation by any of the parties to the IST. It allows the enrollee a one-time opportunity to reschedule the IST. This Section achieves the objective of notifying the Department and the parties about their duties for conducting an IST.
R20-6-2404 Arbitrators	R20-6-2404 imposes requirements on the Department for the provision of arbitrators. It also allows the insurer and provider to mutually agree to use an arbitrator that is not provided by the Department. This Section achieves the objective of imposing duties upon the Department regarding arbitrators and notifying the parties of their rights to use alternate arbitrators of their choice.
R20-6-2405 Before the Arbitration	R20-6-2405 defines the duties of the enrollee and insurer before the arbitration. This Section achieves the goal of notifying these parties of their responsibilities prior to participating in the arbitration.
R20-6-2406 The Arbitration	R20-6-2406 provides procedures for conducting an arbitration including what is allowable evidence and the arbitrator's, insurer's and provider's responsibilities. The rule also defines what information is confidential. This Section achieves the objective of providing the participants guidelines of what is expected of them when engaging in an arbitration.

**2. Has the agency received written criticisms of the rules since the rules were adopted?**

*Including any written analysis submitted to the agency questioning whether the rules are based on valid scientific or reliable principles or methods.*

Yes  No

3. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. § 20-143

Specific Statutory Authority: A.R.S. § 20-3115 requires: “A. The department shall develop a simple, fair, efficient and cost-effective arbitration procedure for surprise out-of-network bill disputes and specify time frames, standards and other details of the arbitration proceeding, including procedures for scheduling and notifying the parties of the settlement teleconference . . .”

The Legislature authorized this rulemaking by session law: Laws 2018, Ch. 272 § 7.

4. **Are the rules consistent with other rules and statutes and current agency enforcement policy?**

Yes X No    

5. **Are the rules clear, concise, and understandable?**

Yes X No    

6. **Economic, small business, and consumer impact of the rules:**

In 2017, the Legislature passed the Out-of-Network Claim Dispute Resolution Act (A.R.S. §§ 20-3111 through 20-3119) (Laws 2017, Ch. 190 § 3, amended by Laws 2018, Ch. 272 § 7) in an effort to allow an enrollee of a health plan who has received a surprise out-of-network bill (“surprise bill”) and who disputes the amount of the surprise bill to dispute resolution of the bill provided that certain criteria are met. The economic impact to consumers is beneficial because it allows them to dispute, at no cost to them, a surprise bill and only requires them to pay what they are contractually required to pay under their insurance policy to the out-of-network provider. The balance of the surprise bill is negotiated between the provider and the health insurance company. The insurers and especially the providers are economically impacted by the Act. If they do not settle the surprise bill, they must pay for an arbitrator. In addition, the provider may have to settle for an amount that is less than the surprise bill. However, the rules are procedural in nature and do not impose any additional costs to the parties.

7. **Has the agency received any business competitiveness analyses of the rules regarding the rules’ impact on this state’s business competitiveness as compared to the competitiveness of business in other states?**

Yes     No X

8. **Whether the agency has completed any additional process required by law, including the requirement for the agency to publish otherwise exempt rules or provide the public with an opportunity to comment on the rules.**

In the session law (Laws 2018, Ch. 272, § 7), the Legislature required the Department to hold at least one public hearing to provide an opportunity to comment on the proposed rules. The Department accepted written comments during two public comment periods (August 20 through September 30, 2018 and November 2 through November 9, 2018). In addition, the Department conducted a Public Comment Hearing on November 1, 2018. The Department received comments from the following types of individuals and groups: Health insurers, health care providers, a health care billing company and a patient advocate. Members of the Department also submitted comments. Comments fell within the following categories: 1. Clarification of definitions. 2. Concern about adequate notification to the parties. 3. Concerns about meaningful physician participation in light of their busy schedules. 4. Concerns about the confidentiality of Personal Health Information. 5. Concerns about the costs associated with an Arbitration.

9. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in this Article are procedural in nature and do not impose any additional costs to regulated persons not already imposed by the Out-of-Network Claim Dispute Resolution Act (A.R.S. §§ 20-3111 through 20-3119).

10. **Are the rules more stringent than corresponding federal laws unless a statutory authority exists to exceed the requirements of the federal law?**

No corresponding Federal law exists. The Out-of-Network Claim Dispute Resolution Act is strictly state law and has no Federal counterpart. The rules were written without reference to any external laws or regulations.

11. **For rules that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037:**

The rules do not require the issuance of a permit, license or agency authorization. They merely set up a process for a consumer to appeal a surprise out-of-network medical bill.

## ARTICLE 24. OUT-OF-NETWORK CLAIM DISPUTE RESOLUTION

### R20-6-2401. Definitions

The definitions in A.R.S. § 20-3111 and this Section apply to this Article.

1. "Allowed Amount" is the amount reimbursable for a covered service under the terms of the enrollee's benefit plan. The allowed amount includes both the amount payable by the insurer and the amount of the enrollee's cost sharing requirements.
2. "Alternative Arbitrator" is an individual who is mutually agreeable to the health insurer and health care provider to act as the arbitrator of a surprise out-of-network billing dispute. If the person is contracted with the State of Arizona to conduct arbitration proceedings, the provisions of that contract shall apply. Department staff may not serve as an Alternative Arbitrator.
3. "Amount of the enrollee's cost sharing requirements" means the amount determined by the insurer prior to the dispute resolution process to be owed by the enrollee for out-of-network copayment, coinsurance and deductible pursuant to the enrollee's health care policy.
4. "Arbitrator" has the same meaning as A.R.S. § 20-3111(2) and may include a mediator, arbitrator or other alternative dispute resolution professional who is contracted with the Department to arbitrate a surprise out-of-network billing dispute. Department staff may not serve as an Arbitrator.
5. "A.R.S. § 20-3113 Disclosure" means a written, dated document that contains the following information:
  - a. The name of the billing health care provider;
  - b. A statement that the health care provider is not a contracted provider;
  - c. The estimated total cost to be billed by the health care provider or the provider's representative for the health care services being provided;
  - d. A notice that the enrollee or the enrollee's authorized representative is not required to sign the A.R.S. § 20-3113 Disclosure to obtain health care services;
  - e. A notice that if the enrollee or the enrollee's authorized representative signs the A.R.S. § 20-3113 Disclosure, they may have waived any rights to request arbitration of a qualifying surprise out-of-network bill.
6. "Balance bill" means all charges that exceed the enrollee's cost sharing requirements and the amount paid by the insurer.
7. "Date of service" means the latest date on which the health care provider rendered a related health care service that is the subject of a qualifying surprise out-of-network bill.
8. "Days" as used in this Article means calendar days unless specified as business days and does not include the day of the filing of a document.
9. "Department" means the Arizona Department of Insurance or an entity with which it contracts to administer the out-of-network claim dispute resolution process.
10. "Enrollee's authorized representative" means a person to whom an enrollee has given express written consent to represent the enrollee, the enrollee's parent or legal guardian, a person appointed by the court to act on behalf of the enrollee or the enrollee's legal representative. An enrollee's authorized representative shall not be someone who represents the provider's interests.
11. "Final resolution of a health care appeal" means that a member has a final decision under the review process provided by A.R.S. Title 20, Chapter 15, Article 2.
12. "Informal Settlement Teleconference" means a teleconference arranged by the Department that is held to settle the enrollee's qualifying surprise out-of-network bill prior to an Arbitration being scheduled. The parties to the Informal Settlement Teleconference are: (a) the enrollee or the enrollee's authorized representative; (b) the health insurer; and (c) the provider or the provider's representative.
13. "Qualifying surprise out-of-network bill" is a surprise out-of-network bill for health care services provided on or after January 1, 2019, that is disputed by the enrollee and:
  - a. Is for health care services covered by the enrollee's health plan;
  - b. Is for health care services provided in a network health care facility;
  - c. Is for health care services performed by a provider who is not contracted to participate in the network that serves the enrollee's health plan;
  - d. The enrollee has resolved any health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, that the enrollee may have had against the insurer following the health insurer's initial adjudication of the claim;
  - e. The enrollee has not instituted a civil lawsuit or other legal action against the insurer or health care provider related to the surprise out-of-network bill or the health care services provided;
  - f. The amount of the surprise out-of-network bill for which the enrollee is responsible for all related health care services provided by the health care provider whether contained in one or multiple bills, after deduction of the enrollee's cost sharing requirements and the insurer's allowable reimbursement, is at least \$1,000.00; and
  - g. One of the following applies:
    - i. The bill is for emergency services, including under circumstances described by A.R.S. § 20-2803(A);
    - ii. The bill is for health care services directly related to the emergency services that are provided during an inpatient admission to any network facility;
    - iii. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure;
    - iv. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative did not provide the enrollee a written dated A.R.S. § 20-3113 Disclosure within a reasonable amount of time before the enrollee received the service;

- v. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative chose not to sign the Disclosure;
- vi. The bill is for a health care service that was not provided in the case of an emergency and the health care provider or provider's representative provided the enrollee a written dated A.R.S. § 20-3113 Disclosure ("Disclosure") and the enrollee or the enrollee's authorized representative signed the Disclosure but the amount actually billed to the enrollee is greater than the estimated cost provided in the signed Disclosure.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2402. Request for Arbitration**

- A.** Request for Arbitration. An enrollee may request dispute resolution of a surprise out-of-network bill by filing a timely Request for Arbitration with the Department on a Request for Arbitration form available on the Department's website.
- B.** Deadline for filing a Request for Arbitration with the Department. A Request for Arbitration must be received by the Department within one year after the date of service listed on the surprise out-of-network bill. If the enrollee filed a health care appeal pursuant to A.R.S. Title 20, Chapter 15, Article 2, the one year deadline is tolled from the date the enrollee filed the health care appeal to the date of the final resolution of the appeal.
- C.** Evaluation of the Request for Arbitration by the Department. Within 15 days after receipt of a Request for Arbitration, the Department shall do one of the following:
  - 1. Determine that the surprise out-of-network bill is a qualifying surprise out-of-network bill and notify the enrollee, health insurer and health care provider that the Request for Arbitration qualifies for Arbitration;
  - 2. Determine that the surprise out-of-network bill is not a qualifying surprise out-of-network bill and notify the enrollee of the reason for the Department's determination;
  - 3. Determine that the Request for Arbitration is incomplete; or
  - 4. Return the Request for Arbitration to the enrollee without making a determination if the enrollee's request should instead be filed as a health care appeal within the meaning of A.R.S. Title 20, Chapter 15, Article 2.
- D.** Request for additional information for an incomplete Request for Arbitration. If the Department determines that the Request for Arbitration is incomplete, the Department may send a written request for additional information to the enrollee, health insurer, health care provider or health care provider's billing company.
- E.** Time to respond to the Department's Request for Additional Information. The enrollee, health insurer, health care provider or the health care provider's billing company shall have 15 days from the date of the request to respond to the Department's Request for Additional Information.
- F.** Failure to respond to the Department's Request for Additional Information.
  - 1. If the enrollee fails to respond to the Department's Request for Additional Information, the Department shall deny the enrollee's Request for Arbitration.
  - 2. If either the health insurer or the health care provider or health care provider's billing company fail to respond to the Department's Request for Additional Information, the Department shall deem that the enrollee's Request for Arbitration qualifies for arbitration.
- G.** Receipt of Additional Information. Upon receipt of the additional information requested by the Department under subsection (D) of this Section, the Department shall determine, within seven days, whether the enrollee's Request for Arbitration qualifies for Arbitration and send the notice required under subsection (C)(1) or subsection (C)(2) of this Section, whichever applies.
- H.** Final Determination. The Department's determination whether an enrollee's Request for Arbitration qualifies for Arbitration is a final decision and not an appealable agency action within the meaning of A.R.S. § 41-1092(3). A claim that is the subject of a qualifying surprise out-of-network bill is not subject to the timely payment of claims law during the pendency of the Arbitration.
- I.** Enrollee's payment responsibility.
  - 1. Notwithstanding any informal settlement or Arbitrator's Final Written Decision, the enrollee is responsible for only the following:
    - a. The amount of the enrollee's cost sharing requirements; and
    - b. Any amount received by the enrollee from the enrollee's health insurer as payment for the health care services at issue in a qualifying surprise out-of-network bill.
  - 2. A health care provider may not issue, either directly or indirectly through its billing company, any additional balance bill to the enrollee for the same health care services.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2403. Informal Settlement Teleconference**

- A.** Deadline to arrange the Informal Settlement Teleconference. Upon a determination that an enrollee has made a Request for Arbitration that qualifies for Arbitration, the Department shall arrange an Informal Settlement Teleconference between the parties within 30 days of notifying the enrollee that the enrollee's Request for Arbitration qualifies for Arbitration required by Section R20-6-2402(C)(1).
- B.** Notice of Informal Settlement Teleconference. At least 14 days prior to the scheduled date, the Department shall send a Notice of Informal Settlement Teleconference to the enrollee, the enrollee's authorized representative, the health insurer, the health care provider and the health care provider's representative informing them of the date, time and instructions on how to participate in the Informal Settlement Teleconference.

- C. Health Insurer documentation. On or before the Informal Settlement Teleconference, the health insurer shall provide to the parties the enrollee's cost sharing requirements under the enrollee's health plan based on the qualifying surprise out-of-network bill.
- D. Consequences of non-participation in the Informal Settlement Teleconference. If a party fails to participate in the Informal Settlement Teleconference, it shall be subject to the following consequences:
  - 1. If the health insurer, provider or provider's representative fails to participate in an Informal Settlement Teleconference scheduled by the Department, the participating party may notify the Department which shall promptly schedule the Arbitration. The non-participating party shall pay the entire cost of the Arbitration.
  - 2. If the enrollee or the enrollee's authorized representative fails to participate in the original Informal Settlement Teleconference, the original Informal Settlement Teleconference is terminated.
  - 3. If the enrollee or the enrollee's authorized representative fails to participate in a rescheduled Informal Settlement Teleconference, the enrollee's Request for Arbitration is terminated.
- E. One-time opportunity for the enrollee to reschedule the Informal Settlement Teleconference. If the enrollee or the enrollee's representative fails to participate in the Informal Settlement Teleconference originally scheduled by the Department, the enrollee may request that the Department reschedule the Informal Settlement Conference. The enrollee's request to reschedule must be received by the Department within 14 days after the originally scheduled Informal Settlement Teleconference. Failure to submit a request to the Department to reschedule the Informal Settlement Teleconference within the 14 day period terminates the enrollee's Request for Arbitration.
- F. Notification to the Department after the Informal Settlement Teleconference. Within seven days after the date of the Informal Settlement Teleconference, the health insurer shall:
  - 1. Notify the Department whether a settlement was reached between the parties; and
  - 2. If a settlement was reached, notify the Department of the terms of the settlement on a form prescribed by the Department.
- G. Failure to settle. If the parties fail to settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the Department shall arrange for the Arbitration.
- H. Settlement. If the parties settle the qualifying surprise out-of-network bill at the Informal Settlement Teleconference, the health insurer shall remit its portion of the payment to the health care provider within 30 days after the Informal Settlement Teleconference. A claim that is reprocessed by a health insurer as a result of informal settlement is not in violation of A.R.S. § 20-3102(L).

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2404. Arbitrators**

- A. Contracted entities. The Department shall contract with one or more persons to provide Arbitrators. The Department must have a list of at least four Arbitrators to assign to Arbitrations. The Department shall publish the list of contracted entities and a list of each entity's qualified Arbitrators on its website.
- B. Arbitrator Qualifications. Any person contracting with the Department must be able to provide Arbitrators who possess at least three years of experience in health care services claims.
- C. Alternative Arbitrators. A health insurer and provider may mutually agree to use an Alternative Arbitrator if either the health insurer or the health care provider objects to an Arbitrator appointed by the Department.
- D. Appointment of an Arbitrator.
  - 1. The Department shall appoint an Arbitrator for each Arbitration.
  - 2. If the health insurer and health care provider do not agree to the Arbitrator appointed by the Department, they shall either:
    - a. Mutually agree to use an Alternative Arbitrator; or
    - b. Participate in the following procedure:
      - i. The Department shall assign three Arbitrators.
      - ii. The health insurer shall strike one Arbitrator.
      - iii. The health care provider shall strike one Arbitrator.
      - iv. If one Arbitrator remains, the Department shall appoint the remaining Arbitrator to the Arbitration.
      - v. If the health insurer and health care provider strike the same Arbitrator, the Department shall randomly assign the Arbitrator from the remaining two Arbitrators.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2405. Before the Arbitration**

- A. Enrollee's duties. Before the Arbitration, the enrollee shall:
  - 1. Pay or make arrangements in writing to pay to the health care provider the amount stated by the health insurer in the Informal Settlement Teleconference which shall be the total amount of the enrollee's cost sharing requirements due for the health care services that are the subject of the qualifying surprise out-of-network bill.
  - 2. Pay to the health care provider any amount that the enrollee has received from the health insurer as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.
- B. Health insurer's duties. Before the Arbitration, the health insurer shall remit any amount due to the health care provider if the health care insurer pays for out-of-network services directly to health care providers and the health insurer has not remitted any amounts due.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).

**R20-6-2406. The Arbitration**

- A. Conduct of Arbitration. An Arbitration of a qualifying out-of-network surprise bill shall be conducted:
  - 1. Telephonically unless the parties agree otherwise;
  - 2. With or without the enrollee's participation;
  - 3. Within 120 days after the Department's Notice of Arbitration unless agreed otherwise by the parties; and
  - 4. For a maximum duration of four hours unless agreed otherwise by the parties.
- B. Arbitrator's Determination. The Arbitrator or Alternative Arbitrator shall determine the amount the health care provider is entitled to receive as payment for the health care services that are the subject of the qualifying surprise out-of-network bill.
- C. Allowable Evidence. The Arbitrator or Alternative Arbitrator shall allow each party to provide relevant information for evaluating the qualifying surprise out-of-network bill including:
  - 1. The average contracted amount that the health insurer pays for the health care services at issue in the county where the health care provider performed the health care services;
  - 2. The average amount that the health care provider has contracted to accept for the health care services at issue in the county where the health care provider performed the services;
  - 3. The amount Medicare and Medicaid pay for the health care services at issue;
  - 4. The health care provider's direct pay rate for the health care services at issue, if any, under A.R.S. § 32-3216;
  - 5. Any information that would be evaluated in determining whether a fee is reasonable under title 32 and not excessive for the health care services at issue, including the usual and customary charges for the health care services at issue performed by a health care provider in the same or similar specialty and provided in the same geographic area; and
  - 6. Any other reliable sources of information, including databases, that provide the amount paid for the health care services at issue in the county where the health care provider performed the services.
- D. Final Written Decision. Within 10 business days following the Arbitration, the Arbitrator or Alternative Arbitrator shall issue a Final Written Decision and provide a copy to the enrollee, the health insurer, the health care provider, the health care provider's billing company (if applicable) and the health care provider's authorized representative (if applicable).
- E. Payment of the claim. The health insurer shall remit its portion of the payment awarded by the Arbitrator or Alternative Arbitrator to the health care provider within 30 days of the date of the Final Written Decision. A claim that is reprocessed by a health insurer as a result of the Arbitration is not in violation of A.R.S. § 20-3102(L).
- F. Payment of the Costs of Arbitration. The health insurer and health care provider shall make payment arrangements with the Arbitrator or Alternative Arbitrator to pay their respective shares of the costs of the Arbitration within 30 days after the date of the Final Written Decision. The respective shares of the costs of Arbitration are determined as follows:
  - 1. The enrollee is not responsible for any portion of the cost of the Arbitration.
  - 2. The health insurer and the health care provider shall share the costs of the Arbitration equally unless one of the following exceptions applies:
    - a. The health insurer and health care provider agree to share the costs of the Arbitration in non-equal portions.
    - b. The health insurer pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.
    - c. The health care provider or the health care provider's representative pays the entire cost of the Arbitration for failing to participate in the Informal Settlement Teleconference after receiving proper notice from the Department.
- G. Confidentiality. In connection with the Arbitration of a qualifying surprise out-of-network bill, all of the following apply:
  - 1. All pricing information provided by a health insurer or health care provider is confidential.
  - 2. Pricing information provided by a health insurer or health care provider may not be disclosed by the Arbitrator, Alternative Arbitrator or any other party participating in the Arbitration.
  - 3. Pricing information provided by a health insurer or health care provider may not be used by anyone, except the party providing the information, for any purpose other than to resolve the qualifying surprise out-of-network bill.
  - 4. All information received by the Department in connection with the Arbitration is confidential and may not be disclosed to any person except the Arbitrator or Alternative Arbitrator.
- H. Arbitrator's Report. At the conclusion of each Arbitration, the Arbitrator shall produce a report to the Department that contains the following information:
  - 1. Date of Arbitration;
  - 2. Date the Arbitrator issued the Final Written Decision;
  - 3. Whether the parties settled the qualifying surprise out-of-network bill during the Arbitration;
  - 4. The initial amount billed by the health care provider;
  - 5. The payment amount awarded to the health care provider; and
  - 6. Any other information the Department may request an Arbitrator to report prior to an Arbitration.

**Historical Note**

New Section made by exempt rulemaking at 25 A.A.R. 155, effective January 2, 2019 (Supp. 19-1).